

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**RECORD PACKET COPY****M 16a**

Filed: 7/10/02
49th Day: N/A
180th Day: N/A
Staff: AJP-LB
Staff Report: 8/05/02
Hearing Date: 9/9-13/02
Commission Action:

STAFF REPORT: Request for Reconsideration**APPLICATION NUMBER:** 5-02-113R**APPLICANT:** 1719 Ocean Inc.**AGENT:** Howard Laks Associates Architects**PROJECT LOCATION:** 1719 Ocean Front Walk, Santa Monica

PROJECT DESCRIPTION: Demolition of a two-story, 13-unit apartment complex and construction of a 9,943 square foot, 5-unit condominium building above a subterranean 11-car garage.

Lot Area:	10,105 square feet
Building Coverage:	4,643 square feet
Landscape Coverage:	1,620 square feet
Parking Spaces:	11
Zoning:	R3R—Medium Density Multiple Family Coastal Residential District
Ht above existing grade:	30 feet

COMMISSION ACTION AND DATE:

The Commission denied coastal development permit application no. 5-02-113 on June 11, 2002.

SUMMARY OF STAFF RECOMMENDATION:

At the Commission's June 11, 2002 hearing, the Commission denied 1719 Ocean Inc.'s application for (1) the demolition of a two-story, 13-unit apartment complex and (2) the construction of a 9,943 square foot, 5-unit condominium building above a subterranean 11-car garage. The applicant asserts that there were errors of law in the Commission's decision to deny the proposed development in that the Commission did not balance the constitutional rights of the property owner and the objectives of the Coastal Act; the Commission deprived the applicant of all economically viable use of the property; there

spat between government agencies that left the applicant with no recourse, and (2) because it was an intentional wrongful denial of a permit; and consideration of affordable housing matters is outside of Coastal Act statutes. For these reasons, the applicant asserts that there were errors of law upon which the Commission based its decision.

Commission Staff concludes that there were no errors of law which have the potential of altering the Commission's initial decision, and, therefore, staff recommends that the Commission reach the same conclusion and deny the reconsideration request.

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted. Title 14 Cal. Code of Regulations Section 13109.2.

The regulations also state (*id.* at § 13109.4) that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627, which states, *inter alia*:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision.

Cal. Pub. Res. Code § 30627(b)(3). Section 30627 (b)(4) of the Coastal Act also states that the Commission "shall have the discretion to grant or deny requests for reconsideration."

The applicant submitted a request for reconsideration of the Commission's June 11, 2002 decision on July 10, 2002, stating the grounds within the 30 day period following the final vote, as required by Section 13109.2 of the regulations. If a majority of the Commissioners present vote to grant reconsideration, the permit application will be scheduled for the upcoming hearing, at which the Commission will consider it as a new application. Title 14, Cal. Code of Regs., Section 13109.5(c).

Summary of Applicant's Contentions

The request for reconsideration is based on the assertions that "errors of law" have occurred that could potentially alter the Commission's initial decision (see Exhibit No.1). The applicant states:

1. *According to law the Commissioner[s] had to balance the constitutional rights of the property owner and the objectives of the Coastal Act. The Commissioner[s] did not*

take into consideration the fact that there is no viable economic use of the property due to [sic] Ellis Act and rendered a decision which deprived the Applicant of all economically viable uses of Applicant's property. Applicant was required to Ellis his property under Santa Monica law to process his condominium project. Applicant Ellised his property prior to applying for [sic] Coastal permit. The condo project is the only possible economic use under Santa Monica zoning laws because the property has been Ellised. The Commissioner's denial of the project has denied the Applicant of all viable economic use of the property.

Commissioner [sic] has not stated in its decision what kind of visitor-oriented development the area lacks. There are numerous visitor-oriented facilities on and to the south of Santa Monica Pier. These facilities fulfill every kind of a visitor's needs and requirements in the area.

2. The impasse created by Commissioner and City of Santa Monica has put the Applicant in a situation which is not of its own making and which the Applicant cannot do anything to cure. In Landgate, Inc. v. California Coastal Commission 17 Cal. 4th 1006, at 1016, the California supreme court (Citing the Court of Appeals) said that such jurisdictional spat [sic] between two governmental agencies constitutes [sic] regulatory taking. In Landgate Supreme Court warned the Commissioner that such jurisdictional spat [sic] renders the government agencies liable for damages sustained by the property owner.

The jurisdictional spat in this case is the Commissioner's staff's displeasure with the City of Santa Monica about the city's refusal to allow motel or hotel use on the beach—Proposition S was passed by the voters of the City adopting a ban on all hotel or motel use at the beach.

The City only allows residential use at the property site under its R-3 zoning. The city and the Coastal Commission staff are at odds with each other over the best legal use of the property.

The Applicant is in the middle. He has a small parcel of land and has spent at least \$300,000 [sic] three hundred thousand dollars) in permits for the condominium project, all as required by the City.

The Coastal Commission has not adopted any written coastal plan or rule or regulation which would put owner on notice that he would not be allowed to build condominiums on his property. Indeed just prior to his project being approved, the adjoining property was developed with 183 units (Sea Castle), and many other Ocean Front lots have been developed with Coastal Commission approval as condominiums, e.g., in Venice, just __ mile [sic] south of the subject site.

3. Intentional wrongful denial of permit to an applicant that causes delay in the applicant's use of his property constitutes temporary regulatory taking. Syed Mouzzam Ali V. City

of Los Angeles 77 Cal. App. 4th 246. In our case Coastal Commission is denying a project without any rule or regulation and that constitutes a temporary regulatory taking.

4. *Any consideration of matters outside of Coastal Act statutes, like consideration that a 5-unit condominium would accommodate the rich while a 13-unit apartment building would accommodate lower income residents, even if true, is outside the ambit of the Commissioner, and constitutes an error of law. Here, comments of a Commissioner directly referred to such consideration and was [sic] extra-jurisdictional, and an error of law.*

STAFF RECOMMENDATION:

MOTION: *I move that the Commission grant reconsideration of Coastal Development Permit No. 5-02-113*

STAFF RECOMMENDATION TO DENY RECONSIDERATION:

Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY RECONSIDERATION:

The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit no. 5-02-113 on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has an "error of fact" or "error of law" occurred which has the potential of altering the Commission's initial decision.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

On June 11, 2002, the Commission denied the proposed development that is subject to this reconsideration request. The proposed development included the demolition of a two-story, 13-unit apartment complex and construction of a 9,943 square foot, 30-foot high (above existing grade), 5-unit condominium building above a subterranean 11-car garage.

The project site is located on a 10,105 square foot lot, in the City of Santa Monica. (See Exhibits No. 1-3 of the original staff report).

The 10,105 square foot lot has 80 linear feet of frontage along Ocean Front Walk (The Promenade). The proposed project is located immediately adjacent to Ocean Front Walk to the west, Marine Terrace to the south, and Appian Way to the east. Abutting the property to the north is a bicycle and roller skate rental shop. The lot is situated approximately 750 feet south of the Santa Monica Pier, between Pacific Terrace to the north and Marine Terrace to the south, the pedestrian promenade and State beach are to the west. Approximately 730 feet to the south is Pico Boulevard.

The area between the Pier and the western terminus of Pico Boulevard, and west of The Promenade, contains a number of recreational facilities, such as volleyball courts, swings, children's play areas, exercise equipment, and a bike path, in addition to the beach itself. Along the inland side of The Promenade there are a small group of shops selling food and beach-related items, hotels, and a mix of apartments, a public chess park, and public parking lots.

B. Grounds for Reconsideration

Pursuant to Section 30627 (b)(4) of the Coastal Act, the Commission has the discretion to grant or deny requests for reconsideration. Section 30627(a)(1) states that the Commission shall develop procedures for deciding whether to grant reconsideration of any decision to deny an application for a coastal development permit, and shall follow those procedures in making that decision.

Section 30627 (b)(3) states in relevant part that the valid bases for a request for reconsideration include (1) "that an error of fact or law has occurred" that could alter the Commission's initial decision or (2) that there is "relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter". If the Commission votes to grant reconsideration, it will consider the permit application as a new application at a subsequent hearing.

C. Issues Raised by the Applicant

The applicant asserts that the Commission has committed the following errors of law:

Applicant's Assertion

1. *According to law the Commissioner[s] had to balance the constitutional rights of the property owner and the objectives of the Coastal Act. The Commissioner[s] did not take into consideration the fact that there is no viable economic use of the property due to [sic] Ellis Act and rendered a decision which deprived the Applicant of all economically viable uses of Applicant's property. Applicant was required to Ellis his*

property under Santa Monica law to process his condominium project. Applicant Ellised his property prior to applying for [sic] Coastal permit. The condo project is the only possible economic use under Santa Monica zoning laws because the property has been Ellised. The Commissioner's denial of the project has denied the Applicant of all viable economic use of the property.

Staff Analysis

Although characterized as an error of law, this claim actually alleges an error with respect to a mixed issue of fact and law. The essence of the claim is that, given the local zoning restrictions and the removal of the property from the rental market pursuant to the Ellis Act, the Commission's denial of the application deprived the applicant of all remaining economically viable use of its property, as there is no viable economic use consistent with the zoning and the Ellis Act other than the proposed condominium project. This statement is factually false, as there are allowable, economically viable alternatives to the proposed development. Thus, the Commission committed no legal error by denying the application.

In denying the proposed residential use, the Commission found that, under the City's current zoning (R3R—Medium Density Multiple Family Coastal Residential District), the applicant could develop the site with non-residential uses as well, which would have less of an adverse impact on coastal access and recreation than the proposed low-priority residential use. The Commission specifically found that, under the City's current zoning, the applicant has the option of developing the site with visitor-serving uses, such as a Bed and Breakfast facility or a bicycle and skate rental facility. The Commission was also informed by Staff that a neighborhood grocery store is also a permitted use under the City's current zoning. These types of developments would enhance access in the area by providing the public with visitor-serving type uses, consistent with Coastal Act sections 30221 and 30222, and would provide the applicant alternative economic uses of his property.

Under the development option of a Bed and Breakfast facility, the applicant can provide up to 4 guest rooms and one kitchen. Given the location along the popular Santa Monica beach, with oceanfront views, proximity to the Pier, and luxury hotels, such as, the Loews, Shutters, Le Mirigot, the site is ideally situated for a Bed and Breakfast facility.

At the hearing, the applicant complained that non-residential uses available for the site consistent with the city zoning are very limited and implied that the allowable uses are not economically viable. However, the applicant has provided no evidence to support his contention that these development alternatives are not economically viable. Given the fact that Santa Monica beach is the most heavily used beach in the Los Angeles area and possibly in the State, with approximately 20 million visitors in any given year (certified 1992 LUP), and the subject site is located in an area that is the most active recreation-oriented area of Santa Monica beach, the available visitor-serving uses may well be ideally suited and economically viable for such an area. Such alternatives would increase coastal access and coastal recreational opportunities for visitors to this area consistent with the

policies of the Coastal Act and will be less environmentally damaging than the proposed exclusively private residential development.

Moreover, as stated at the June 11 Commission hearing by both the Commission and Commission staff, other development options that would be consistent with the existing City zoning would involve a mix of residential and visitor-serving uses. The Commission noted that residential units above the ground floor would be allowed by the City and would also be consistent with the Coastal Act. The applicant did not address this option, or its economic viability, at all.

Furthermore, as an additional feasible development option under the current zoning, the applicant can renovate the existing structure(s) and either continue the existing residential use or initiate some other form of residential use that does not trigger a requirement for a coastal development permit. Although these purely residential options would preclude visitor-serving or recreational use of the site, renovation of the structures could, under certain circumstances, be exempt from Coastal development permit requirements, for example pursuant to Section 30610(b) of the Coastal Act. Therefore, this option is a viable alternative for the property owner. The applicant has not provided any evidence that would suggest that this alternative is not economically viable.

Finally, renovation of the residential building may not be necessary at all. The units were rented up to 1998 when the applicant chose to withdraw the units from the residential rental market. The City has not issued any condemnation orders for the building and the applicant has not submitted any information indicating that the units are uninhabitable. Therefore, although the units have been removed from the rental market the owner as an option can continue to use the units as residential housing.

The applicant states that the condominium project is the only economic use of the property due to the Ellis Act. The Ellis Act was passed by the California legislature in 1985 (Government Code Section 7060). Government Code Section 7060 states, in part, that:

(a) No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease.

The Act allows landowners an unconditional right to go out of the residential rental business and limits the power of localities to regulate the process by which that right may be exercised. The applicant claims to have voluntarily withdrawn the subject property from residential rental use pursuant to the Ellis Act in October of 1998. The withdrawal of the residential rental units from the rental market does not limit the applicant to any specific use and does not preclude the applicant from all other economic use of the property. None of the alternatives discussed above are in any way precluded by the Ellis Act.

Furthermore, the Ellis Act also allows the landowner to re-enter the units into the rental market, subject to the City's rent control.

Therefore, although the applicant has withdrawn the units from the rental market under the Ellis Act, the applicant has a number of development options, as well as returning to the rental market. The applicant has not submitted any information to support his assertion that these alternatives are economically infeasible or are not allowed by the local government. In denying the applicant's condominium project, the Commission did not eliminate all economic use of the applicant's property and informed the applicant that there were other feasible alternatives that could be considered. There has been no showing of any error of fact or law that could have altered the Commission's initial decision. Therefore, this claim does not supply a basis for granting the reconsideration request.

Applicant's Assertion

2. *Commissioner [sic] has not stated in its decision what kind of visitor-oriented development the area lacks. There are numerous visitor-oriented facility uses on and to the south of Santa Monica Pier. These facilities fulfill every kind of a visitor's needs and requirements in the area.*

Staff Analysis

The main Coastal Act policies on which the Commission based its decision to deny application number 5-02-113 are the ones listed in sections 30221 and 30222 of the Coastal Act. These two sections state:

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

This claim by the applicant presumes that these sections require the Coastal Commission to catalogue the visitor-oriented development in the area, and to identify the types that are lacking, in order to deny a project on the basis of these policies, and alleges that the

Commission failed to do so, thus alleging an error of law. In reality, the prioritization system mandated by Section 30222 applies regardless of the presence or absence of existing visitor-serving commercial recreational facilities. Thus, the supply of visitor-oriented development in the area is irrelevant, and cataloging it is unnecessary.

Even Section 30221, which does provide an exception to its mandate (for situations where the demand for recreational activities that a site could accommodate is already adequately provided for in the area), it is the applicant who bears the burden of demonstrating that the exception applies, and therefore, that its proposed development is consistent with the Act. Accordingly, the applicant had the burden of showing that the current supply of recreational facilities is adequate to meet both present and foreseeable future demand for recreational activities. No such showing was made. In fact, the applicant made no attempt to assess either present or future demand for recreational activities. To the extent that the applicant's representative addressed this issue at the hearing at all, he focused exclusively on the current *supply* of visitor-serving facilities, without any mention of demand.

In sum, the Commission was under no obligation to identify the sorts of visitor-oriented development that are lacking in the area. The Coastal Act does not require listing of a specific visitor-oriented development. The Coastal Act states that visitor-serving commercial recreational facilities shall have priority over private residential development and that oceanfront land suitable for recreational use shall be protected unless present and foreseeable future demand is already adequately provided. The Commission appropriately followed these mandates in denying the application.

Finally, even if the Commission did have some responsibility for assessing the demand for recreational activities, it met that responsibility. The Commission's findings include the following analysis of the demand for recreational activities:

Santa Monica beach, which is approximately 2 miles in length, is the most heavily used beach in the Los Angeles area and possibly in the State. According to the 1992 certified LUP, approximately 20 million visitors in any given year will visit Santa Monica beach, and the area between the Pier and Pico Boulevard is the most active recreation-oriented area of the Santa Monica beach. The area between the Pier and Pico Boulevard provides a number of recreational activities that attract visitors to the area, such as, volleyball courts, gymnastic and exercise equipment, children's play area, pedestrian promenade, a chess park, and bike path. As the population continues to increase, use of this area and the rest of the Santa Monica beach area will also increase, placing a greater demand on recreational facilities and increasing the need for additional visitor-serving commercial and recreational type uses.

This issue was adequately addressed by the Commission, and the Commission committed no error of fact or law in making its decision. Therefore, this claim does not supply a basis on which to grant the applicant's reconsideration request.

Applicant's Assertion

3. *The impasse created by Commissioner and City of Santa Monica has put the Applicant in a situation which is not of its own making and which the Applicant cannot do anything to cure. In Landgate, Inc. v. California Coastal Commission 17 Cal. 4th 1006, at 1016, the California Supreme Court (Citing the Court of Appeals) said that such [sic] jurisdictional spat between two governmental agencies constitutes [sic] regulatory taking...*

The jurisdictional spat in this case is the Commissioner's staff's displeasure with the City of Santa Monica about the city's refusal to allow motel or hotel use on the beach—Proposition S was passed by the voters of the City adopting a ban on all hotel or motel use at the beach.

The City only allows residential use at the property site under its R-3 zoning. The City and the Coastal Commission staff are at odds with each other over the best legal use of the property.

Staff Analysis

- a. There is no "Impasse"

The "impasse" the applicant is referring to is the disagreement over the appropriateness of hotels and large restaurants as one possible land use of the project site and surrounding Beach Overlay District area. The area within the Beach Overlay District was excluded from certification of the LUP due to Proposition S prohibiting such land uses, and thus discouraging visitor-serving uses along the beach, and lack of provisions in the LUP for visitor-serving facilities along the beach area, which would result in an adverse impact on coastal access and recreation. In excluding this area, the Commission found that, although Proposition S and its limitations on development were a result of a voters' initiative, with Proposition S in effect, the policies of the City's proposed LUP were inadequate to achieve the basic Coastal Act goal of maximizing public access and recreation to the State beach within the Beach Overlay District area.

As stated in the Commission's findings, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson Way (Beach Overlay District), except for the Santa Monica Pier, and excluding the Civic Center. The LUP was certified in August 1992. On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications. The proposed project, which is located west of Neilson Way, is not covered under the 1992 certified LUP.

Deferring the area from certification did not create an "impasse". As indicated above, even if the combined restrictions imposed by the Commission and Proposition S narrow the allowable uses of the site, at least some economically viable uses remain, including

mixed uses, which could include condos or other forms of residential on the upper floors. In addition, even if the area were covered by the certified LUP, the standard of review for all development remains the Coastal Act until the LCP is totally certified. Therefore, despite the Beach Overlay District being deferred from LUP certification, the applicant is not prohibited from submitting a proposed development that can be approved by the Commission if found consistent with the applicable policies of the Coastal Act.

b. There has been no "taking"

The applicant further states that the alleged "jurisdictional spat" between the Commission and the City constitutes a regulatory taking based on the California Supreme Court's holding in Landgate v. California Coastal Commission (1998), 19 Cal. 4th 1006. That court case involved a coastal development permit application for a single-family dwelling. In that case, on April 30, 1998, the California Supreme Court determined that, unless there is no legitimate purpose behind an agency's regulation, the denial of a development permit due to a governmental agency's improper assertion of jurisdiction would constitute a normal delay inherent in the development process--not a temporary taking of property. Id. at 1022-25.

Landgate's primary holding is that a regulatory mistake resulting in delay does not, by itself, amount to a taking of property, even if the error that caused the delay diminished the value of the subject property. Id. at 1020. Moreover, the Supreme Court rejected the appellate court's attempt to divine the subjective motive behind the Commission's action in Landgate, instead explaining that the "proper inquiry . . . [is] whether there is, objectively, sufficient connection between the land use regulation in question and a legitimate governmental purpose." Id. at 1022. Finally, it stressed that judicial review is even more deferential when the conditions "are simply restrictions on land use and not requirements that the property owner convey a portion of his property [citations omitted] or pay development fees." Id. Here, as in Landgate, there is a direct connection between the Commission's regulation and its concern with promoting visitor-serving uses, a legitimate governmental concern, and an explicit part of the Commission's charge under the Coastal Act. In addition, the denial constitutes a restriction on the use of land, not a requirement for the property owner to convey some portion of his property or to pay any fee. Accordingly, even if a court were to find that the Commission's denial was improper, or the result of some legal error, it would not constitute a taking.

Furthermore, there is no "jurisdictional spat" between the City and the Commission at all. There is no dispute that permit jurisdiction lies with the Commission for this area or that, in the absence of a certified Local Coastal Plan, the standard of review for coastal development permits is the Coastal Act. Land Use Plans that have been previously certified by the Commission but not accepted by the City, provide guidance for future Commission permit actions, however, the standard of review for all development remains the Coastal Act. Therefore, in terms of jurisdiction, there is no argument as to who has jurisdiction and what is the standard of review for all development in this area.

c. Conclusion

The Commission committed no error of law in making its decision. Therefore, this claim does not support reconsideration.

Applicant's Assertion

4. *The Coastal Commission has not adopted any written coastal plan or rule or regulation which would put owner on notice that he would not be allowed to build condominiums on his property. Indeed just prior to his project being approved, the adjoining property was developed with 183 units (Sea Castle), and many other Ocean Front lots have been developed with Coastal Commission approval as condominiums, e.g., in Venice, just __ mile [sic] south of the subject site.*

Staff Analysis

This claim alleges neither new evidence nor any error of fact or law. It alleges only a lack of notice of the Commission's position regarding a specific proposal at a specific site. However, the applicant has provided no basis for its implicit assertion that the Commission is under an obligation to provide such notice to all prospective applicants for every possible proposal. Moreover, as is explained below, the Commission's 1987 action on the proposed LUP did provide general notice of the Commission's position regarding the development of non-visitor-serving facilities in the subject area.

As stated in the findings on the Commission's June 11, 2002 decision, in a previous Commission LUP action, in 1987 and prior to the passage of Proposition S, the Commission certified, with suggested modifications, a LUP that included the area presently known as the Beach Overlay District. In certifying the 1987 LUP, the Commission found that the LUP, as submitted, would result in adverse impacts on coastal access and recreational opportunities and, therefore, denied the LUP as submitted, and approved it with suggested modifications to mitigate any adverse impacts. One of the suggested modifications required that the subarea south of the Santa Monica Pier to Pico Boulevard shall be devoted to visitor-serving uses. Residential uses were permitted in the area, but only above the ground floor of visitor-serving uses. The Commission found that the modification was necessary to assure that the lower priority land use of private residential development would not adversely affect the public beach parking supply and that higher priority recreational and visitor-serving use would not be replaced by private residential development. The 1987 Commission certified LUP, with modifications, was never adopted by the City. However, it reflected the Commission's position on the appropriate development in this area under the Coastal Act.

Subsequently, in 1992, the City submitted a new LUP with policies covering the area between the Pier and Pico Boulevard. One of the policies proposed by the City reflected the Commission's 1987 suggested modification that prohibited residential development on

the ground floor between the Pier and Pico Boulevard. However, the area was within the Beach Overlay District and the area was ultimately deferred from certification.

As stated in the Commission's findings, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson Way (Beach Overlay District), except for the Santa Monica Pier, and excluding the Civic Center. The LUP was certified in August 1992. On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications. The proposed project, which is located west of Neilson Way, is located in the excluded (deferred) area, and is not covered under the 1992 certified LUP. Since the City does not have a certified LCP, the standard of review for all development within the City's coastal zone is the Coastal Act.

Both the 1987 Commission certified LUP, and City's submitted 1992 LUP, are, and have been, available for review by the public at the City of Santa Monica and South Coast District offices. Prior to the applicant's submittal of the coastal development permit application, neither the applicant nor his agent contacted staff to discuss potential development issues in the area or requested a copy of the previous LUP documents. By contacting the South Coast District office the applicant and agent would have been informed of the potential development issues pertaining to the Santa Monica area and the subject property, and could have considered development alternatives and designed a project that could have been found consistent with the Coastal Act.

Furthermore, as was also stated in the Commission findings, recreational and visitor-serving uses as priority uses was an issue previously addressed on the adjacent property to the north. As stated, the Commission previously approved coastal development permits for the property directly abutting the property to the north at 1702 Appian Way/1703 Ocean Front Walk. In January 1994, the Commission approved the demolition of three of four single-family dwellings and construction of a private (non-commercial) tennis court on a 20,000 square foot lot (CDP #5-93-361). The tennis court was intended to be an interim use of the site and associated with the remaining single-family residence abutting the tennis court site. The applicant's ultimate goal was to eventually obtain approval for a Bed and Breakfast facility from the City and the Commission. In approving the demolition and construction of a tennis court, because the tennis court was a low priority use and not a visitor-serving use, the Commission found that the project would have adverse individual and cumulative impacts on access and coastal recreational opportunities by perpetuating low priority uses and reducing development opportunities for visitor-serving commercial development along the beach front. Therefore, since the applicant's intent was to use the tennis court as a temporary use until plans were approved for a bed and Breakfast facility, the Commission found that approving the project as a temporary use, with a condition limiting the use to five years, the tennis court would be consistent with the Coastal Act.

Subsequently, in February 1994, the Commission approved a coastal development permit for the construction of a four-unit Bed and Breakfast facility and demolition of the bicycle

rental shop on the adjoining lot (CDP#5-95-241). In approving the Bed and Breakfast facility, the Commission found that the development was a priority use and would provide visitor accommodations along the beachfront, providing greater opportunities to the public for coastal access and public opportunities for coastal recreation.

The findings in these two permits, which are a matter of public record, if reviewed by the applicant, would have provided the applicant an indication of the development issues of the surrounding area. The 183-unit Sea Castle residential apartment building located immediately to the south, which the applicant erroneously asserts was approved by the Commission, was originally built prior to the Coastal Act and then rebuilt in 1999 after being destroyed by a natural disaster. The rebuilding of the apartment building was exempt from coastal development permit application requirements, under the disaster replacement provisions of Section 30610(g)(1) of the Coastal Act.

With regards to development in Venice, the closest part of Venice is located approximately a mile from this subject site, separated by beach, public parks, and beach parking lots. Furthermore, Venice is not in the City of Santa Monica, but the City of Los Angeles, and is a separate planning area, and development in a separate planning area should not be used to determine the development potential in other planning area.

The applicant has demonstrated no error of fact or law (and no new evidence) that could have altered the Commission's initial decision, and therefore has provided no basis, in this claim, for the granting of its reconsideration request.

Applicant's Assertion

5. *Intentional wrongful denial of permit to an applicant that causes delay in the applicant's use of his property constitutes temporary regulatory taking. Syed Mouzzam Ali V. City of Los Angeles 77 Cal. App. 4th 246. In our case Coastal Commission is denying a project without any rule or regulation and that constitutes a temporary regulatory taking.*

Staff Analysis

This claim alleges an error of law, in the form of a temporary regulatory taking, on the grounds that the Commission intentionally wrongfully denied a permit without any basis. This claim lacks merit for a number of reasons. First, as is explained above, the Commission's denial was not wrongful or baseless, but was based on two sections of the Coastal Act. Second, because there has been no showing that the denial was improper, the case cited is inapplicable. Third, the cited case's holding regarding temporary takings is questionable in light of subsequent United States Supreme Court precedent.

Regarding the basis for the Commission's action, in reviewing coastal development permit applications, the Commission's standard of review is the Coastal Act. In denying the

proposed development the Commission found the proposed development inconsistent with the recreation and visitor-serving policies in sections 30221 and 30222 of the Coastal Act.

With respect to Syed Mouszzam Ali v. City of Los Angeles (1999), 77 Cal. App. 4th 246 ("Ali"), the case dealt with a situation in which the City of Los Angeles tried to impose requirements analogous to requirements that had been declared illegal, in a published appellate case, when attempted by the City of Santa Monica. Id. at 254-255, citing Javidzad v. City of Santa Monica (1988), 204 Cal. App. 3d 524. In that limited context, the court held that the city's position fit into the narrow exception carved out in the Landgate case for government action that is "so unreasonable from a legal standpoint" [citation omitted] as to be arbitrary, not in furtherance of any legitimate governmental objective, and for no other purpose than to delay." Ali, 77 Cal. App. 4th at 255. There has been no judicial pronouncement that the Commission's action in this case is illegal, unreasonable, or arbitrary. Indeed, for all of the reasons listed above, there is every indication that the Commission's action is fully proper and in furtherance not only of a legitimate governmental objective, but a statutory mandate. Moreover, even if the Commission's decision is, at some point in the future, found to have been improper, it would not fit into the narrow category of cases that Ali represents.

Finally, Ali relied on an interpretation of Supreme Court precedent (First English Evangelical Lutheran Church v. Los Angeles County (1987) 482 U.S. 304) that has since been held to be inaccurate. See Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency (2002), 122 S.Ct. 1465, 1481-84.

The applicant has demonstrated no error of fact or law (and no new evidence) that could have altered the Commission's initial decision, and therefore has provided no basis, in this claim, for the granting of its reconsideration request.

Applicant's Assertion

6. *Any consideration of matters outside of Coastal Act statutes, like consideration that a 5-unit condominium would accommodate the rich while a 13-unit apartment building would accommodate lower income residents, even if true, is outside the ambit of the commissioner, and constitutes an error of law. Here, comments of a Commissioner directly referred to such consideration and was [sic] extra-jurisdictional, and an error of law.*

Staff Analysis

The Commission assumes that the applicant's reference to "consideration of matters outside of Coastal Act statutes, like consideration that a 5-unit condominium would accommodate the rich while a 13-unit apartment building would accommodate lower

income residents," is a reference to the following statement by Commissioner Nava during the hearing:

"We've got thirteen units that at least provided some kind of housing for people, regardless of how it was that it came to be vacant, and often times what we see are buildings are made vacant so that there's a compelling argument for additional use. Approval of this project eliminates thirteen units in exchange for five unit condominiums on the sand that undoubtedly will sell for a million-four each, and I think that we have some issues with respect to the kind of use that the Coastal Act encourages in this particular area. So I'm supporting staff."

As a threshold matter, whether the Commission commits legal error is determined based on the procedures it follows, its ultimate action, and the findings it adopts in support of that action. The statements of one Commissioner do not guide the analysis of the propriety of the Commission's decision. This principle was affirmed in Landgate as well, when the court noted the general principle that "courts do not delve into the individual purposes of decisionmakers in a quasi-adjudicative proceeding, but rather look to the findings made by the government agency and determine whether these are based on substantial evidence." Landgate, 17 Cal. 4th at 1022. The written findings adopted by the Commission at its June 11, 2002, hearing demonstrate that they are supported by such substantial evidence.

Even if an analysis of Commissioner Nava's statement were relevant to the current inquiry, that statement does not indicate any legal error, consideration of matters outside the ambit of the commission's responsibilities, or any extra-jurisdictional or *ultra vires* action by the Commission. Commissioner Nava's statement reflected a concern with development density ("[a]pproval of this project eliminates thirteen units in exchange for five unit[s]") and preferred land uses ("we have some issues with respect to the kind of use that the Coastal Act encourages in this particular area"), both of which are appropriate Coastal Act concerns. The Coastal Act is replete with policies concerning development density. See, e.g., sections 30250(a) (new development "shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it") and 30007.5 (regarding sprawl); see also sections 30252 and 30253(4). Policies concerning preferred land uses are the primary subject of the Commission's findings. Finally, to the extent this was in doubt, the Executive Director later clarified, on the record, that the policy decision with respect to housing related to density and housing generally, not to the provision of low-cost housing.

The applicant has demonstrated no error of fact or law (and no new evidence) that could have altered the Commission's initial decision, and therefore has provided no basis, in this claim, for the granting of its reconsideration request.

D. Conclusion

The applicant has not pointed to any error of fact or law that could have altered the Commission's initial decision, nor has it presented any relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter. Consequently, there is no basis for reconsideration, and the applicant's request for reconsideration must be denied.

07/10/2002 1:03 PM
July 10, 2002 1:03 pm

LAW OFFICES OF
ROSARIO PERRY

312 PICO BOULEVARD
SANTA MONICA, CA. 90403

screen: (310) 395-0645
fax: (310) 394-4294
e-mail: rosario@oceanlaw.com

1719 OCEAN, INC'S

PETITION FOR RECONSIDERATION

California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802
tele: 562 590 5071; fax: 562-590 5084

Re: CDP No. 5-02-113
Petitioner: 1719 Ocean Inc.
Address: 1719 Ocean Front Walk, Santa Monica

COASTAL COMMISSION
CALIFORNIA
JUL 10 2002
South Coast Region
RECEIVED

Dear Commissioners:

This law firm, representing 1719 Ocean Inc. (the "Applicant"), hereby petitions for reconsideration of California Coastal Commission's June 11, 2002's decision to deny the Applicant a permit to construct a five unit condominium.

The following are the errors of law which resulted in the decision of the Commission:

Errors of Law:

1. According to law the Commissioner had to balance the constitutional rights of the property owner and the objectives of the Coastal Act. The Commissioner did not take into consideration the fact that there is no viable economic use of the property due to Ellis Act and rendered a decision which deprived the Applicant of all economically viable uses of Applicant's property. Applicant was required to Ellis his property under Santa Monica law to process his condominium project. Applicant Ellised his property prior to applying for Coastal permit. The condo project is the only possible economic use under Santa Monica zoning laws because the property has been Ellised. The Commissioner's denial of the project has denied the Applicant of all viable economic use of the property.

Commissioner has not stated in its decision what kind of visitor-oriented development the area lacks. There are numerous visitor-oriented facilities on and to the south of Santa Monica Pier. These facilities fulfill every kind of a visitor's needs and requirements in the area.

2. The impasse created by Commissioner and City of Santa Monica has put the Applicant in a situation which is not of its own making and which the Applicant cannot do anything to cure. In Landgate, Inc. v. California Coastal Commission 17 Cal. 4th 1006, at 1016, the California Supreme Court (Citing the Court of Appeals) said that such jurisdictional spat between two governmental agencies constitutes regulatory taking. In Landgate Supreme Court warned the Commissioner that such jurisdictional spat renders the government agencies liable for damages sustained by the property owner.

07-10-02CC

1

EXHIBIT NO. 7
APPLICATION NO. 5-02-113R
<i>Applicant's Reconsideration Request</i>
 California Coastal Commission

The jurisdictional spat in this case is the Commissioner's staff's displeasure with the City of Santa Monica about the City's refusal to allow motel or hotel use on the beach—Proposition S was passed by the voters of the City adopting a ban on all hotel or motel use at the beach.

The City only allows residential use at the property site under its R-3 zoning. The City and the Coastal Commission staff are at odds with each other over the best legal use of the property.

The Applicant is in the middle. He has a small parcel of land and has spent at least \$300,000 (three hundred thousand dollars) in permits for the condominium project, all as required by the City.

The Coastal Commission has not adopted any written coastal plan or rule or regulation which would put owner on notice that he would not be allowed to build condominiums on his property. Indeed just prior to his project being approved, the adjoining property was developed with 183 units (Sea Castle), and many other Ocean Front lots have been developed with Coastal Commission approval as condominiums, e.g., in Venice, just mile south of the subject site.

3. Intentional wrongful denial of permit to an applicant that causes delay in the applicant's use of his property constitutes temporary regulatory taking. Syed Mouzzam Ali v. City of Los Angeles 77 Cal.App. 4th 246. In our case Coastal Commission is denying a project without any rule or regulation and that constitutes a temporary regulatory taking.
4. Any consideration of matters outside of Coastal Act statutes, like consideration that a 5-unit condominium would accommodate the rich while a 13-unit apartment building would accommodate lower income residents, even if true, is outside the ambit of the Commissioner, and constitutes an error of law. Here, comments of a Commissioner directly referred to such consideration and was extra-jurisdictional, and an error of law.

Conclusion

For the foregoing reasons it is evident that the Commissioner must reconsider its decision and render a decision approving Applicant's condominium project.

Sincerely



Rosario Perry

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



Filed: 4/16/02
49th Day: 6/4/02
180th Day: 10/13/02
Staff: AJP-LB
Staff Report: 5/13/02
Hearing Date: 6/11-14/02
Commission Action:

COMMISSION ACTION ON **TU 12h 6.11.02**

☐ Approved as Recommended

☒ Denied as Recommended **per staff**

☐ Approved with Changes

☐ Denied

☐ Other

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-02-113

APPLICANT: 1719 Ocean Inc.

AGENT: Howard Laks Associates Architects

PROJECT LOCATION: 1719 Ocean Front Walk, Santa Monica

PROJECT DESCRIPTION: Demolition of a two-story, 13-unit apartment complex and construction of a 9,943 square foot, 5-unit condominium building above a subterranean 11-car garage.

Lot Area:	10,105 square feet
Building Coverage:	4,643 square feet
Landscape Coverage:	1,620 square feet
Parking Spaces:	11
Zoning:	R3R—Medium Density Multiple Residential Beach District
Ht above existing grade:	30 feet

LOCAL APPROVALS RECEIVED: Conditional Use Permit 99-006; Vesting Tentative Parcel Map 52838; Architectural Review Board approval-- ARB 01-385.

SUBSTANTIVE FILE DOCUMENTS: Santa Monica conditionally certified LUP, with suggested modifications, 1987 (never effectuated); Santa Monica certified LUP, with suggested modifications, 1992 (effectively certified November 17, 1992); coastal development permits 5-83-560, 5-93-361, 5-95-241, and 5-99-127.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission deny the proposed project because the project is inconsistent with Section 30221 and 30222 of the Coastal Act in that the property is suitable for visitor-serving commercial uses or recreational use, both of which have priority over private residential development here and that the proposed residential use will have cumulative adverse impacts to coastal access and coastal recreation.

EXHIBIT NO. 2**APPLICATION NO.****5-02-113 R****Initial Staff****Report**
California Coastal Commission

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-02-113 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant proposes to demolish a two-story, 13-unit apartment complex and construct a 9,943 square foot, 30-foot high (above existing grade), 5-unit condominium building above a subterranean 11-car garage. The project site is located on a 10,105 square foot lot, in the City of Santa Monica. See Exhibit No. 1-3.

The proposed project is located immediately adjacent to Ocean Front Walk (The Promenade) to the west, Marine Terrace to the south, and Appian Way to the east. Abutting the property to the north is a bicycle and roller skate rental shop. The 10,105 square foot lot has 80 linear feet of frontage along Ocean Front Walk. The lot is situated approximately 750 feet south of the Santa Monica Pier, between Pacific Terrace to the north and Marine Terrace to the south, the pedestrian promenade and State beach are to the west. Approximately 730 feet to the south is Pico Boulevard.

The area between the Pier and Pico Boulevard, and west of The Promenade, contains a number of recreational facilities, such as volleyball courts, swings, children's play area,

exercise equipment, chess game area, and bike path. Along the inland side of The Promenade there are a small group of shops selling food and beach-related items, hotels, and a mix of apartments, and public parking lots.

B. Past Commission Permit Action

The Commission has approved a number of permits within this oceanfront area between the Pier and Pico Boulevard. Immediately to the north of the project site, the Commission approved two separate projects on the same lot located at 1702 Appian Way/1703 Ocean Front Walk. In January 1994, the Commission approved the demolition of three of four single-family dwellings and construction of a private (non-commercial) tennis court on a 20,000 square foot lot (CDP #5-93-361). The tennis court was intended to be an interim use of the site and associated with the remaining single-family residence abutting the tennis court site.

The City prohibits the demolition of structures without a proposed replacement project, therefore, the proposed tennis court was to allow the applicant to remove the dilapidated structures on-site and improve the appearance of the lot. The applicant's ultimate goal was to eventually obtain approval for a Bed and Breakfast facility from the City and the Commission. The approval of the demolition and tennis court project would allow the property owner to quickly improve the site while going through the longer permitting process for the Bed and Breakfast project.

In approving the demolition and tennis court, because the tennis court was a low priority use and not a visitor-serving use, the Commission found that the project would have adverse individual and cumulative impacts on access and coastal recreational opportunities by perpetuating low priority uses and reducing development opportunities for visitor-serving commercial development along the beach front. Therefore, since the applicant's intent was to use the tennis court as a temporary use until plans were approved for a bed and Breakfast facility, the Commission found that approving the project as a temporary use, with a condition limiting the use to five years, the tennis court would be consistent with the Coastal Act.

Subsequently, in February 1994, the Commission approved a coastal development permit for the construction of a four-unit Bed and Breakfast facility and demolition of the bicycle rental shop on the adjoining lot (CDP#5-95-241). In approving the Bed and Breakfast facility, the Commission found that the development was a priority use and would provide visitor accommodations and provide low-cost recreational activities along the beachfront, providing greater opportunities to the public for coastal access and public opportunities for coastal recreation.

The buildings have been demolished, except for the bicycle rental shop, but the tennis court or the Bed and Breakfast facility were never constructed. The lot has been landscaped and is currently vacant.

Other projects along Ocean Front Walk approved by the Commission include the Shutters Hotel to the south of the project site (CDP #5-87-1105), and a hotel (former Pritikin Center) renovation (CDP#5-99-127) located just south of Pico Boulevard. Immediately to the south of the project site a disaster replacement exemption was issued for the reconstruction of a 178 unit apartment building (Sea Castle), which was damaged by the 1994 Northridge earthquake and fire in 1996.

In 1998, the Commission approved coastal development permit no. 5-98-009 for the renovation of the playground and gymnastic equipment, improvements to the bicycle path and renovation of the Promenade, including a vehicle turn-out and beach drop-off at the terminus of Bay Street (south of Pico Boulevard). The improvements extended from south of the Pier to Bay Street.

C. Beach Overlay District

The subject property and surrounding area is located within the City's Beach Overlay District. The boundary of the Beach Overlay District extends along Ocean Avenue from the City's northern boundary line to Neilson Way, then along Neilson Way to the southern boundary of the City, excluding the pier and the area between the Pier on the north and Seaside Terrace on the south (see Exhibit No. 2). The Beach Overlay District was created in 1990 with the passage of a Santa Monica voter initiative (referred to as Proposition S). The initiative prohibits hotel and motel development, and restaurants over 2,000 square feet within the City's Beach Overlay District. According to the initiative, the purpose is to:

...protect the public health, safety and welfare of present and future residents of the City... by avoiding the deleterious effects of uncontrolled growth in the beach Overlay District and preserving the unique and diverse character of the Santa Monica oceanfront.

This purpose is achieved by limiting the proposed proliferation of excessive hotel, motel and large restaurant development within the Beach Overlay District. Such development ignores the need to preserve Santa Monica's greatest physical asset—its oceanfront setting, view, and access to coastal resources—and to maintain its beach and oceanfront parks as open recreational area for present and future generations.

Hotels, motels, and large restaurants are visitor-serving uses that provide public opportunities for coastal recreation and access. With the loss of areas for development of this sort of visitor-serving commercial recreational uses, the opportunities for developing visitor-serving uses generally in this beach front area are significantly reduced, and the City's ability to plan for increasing visitor-serving commercial recreational uses is significantly reduced due to the limited area in which such uses could be developed. With the loss of beach front areas that are suitable for visitor-serving development, the effects of Proposing S, and its limitations on developing visitor-serving uses, are much more

significant. For these reasons, it is all the more important that beach front property that is suitable for visitor-serving uses in this area should be reserved for such uses. To mitigate the effects of Proposition S it may be necessary to increase the level of scrutiny applied to proposals for residential development, or any other non-visitor-serving type of development, along the beach and encourage more visitor-serving uses in areas where visitor-serving uses are found to be appropriate.

In comments on past Commission permit actions, the City has stated that public facilities can encourage beach recreation just as well as restaurants and hotels, therefore, Proposition S does not necessarily prohibit the City from providing and enhancing visitor-serving facilities and beach access. This may be true, however, allowing recycling of residential uses with no provisions for visitor-serving facilities and access precludes the development of recreation and access facilities within the area. It may be necessary to provide additional public facilities on this beach in order to protect and enhance public access to the shoreline. The City's options on methods to increase recreational support facilities in light of Proposition S, include increasing privately operated facilities, requiring or encouraging redevelopment of lots with low priority uses to visitor-serving uses, or exploring an alternate program that allows the homeowners and residents who might benefit from less traffic, less beach visitors, and less visitor-resident conflicts, due to the absence of commercial support facilities, such as restaurants, hotels, and visitor-serving recreational commercial businesses, to provide a public facility network.

While City staff and coastal staff will continue to work together to develop policies for the Beach Overlay District to mitigate the potential adverse impacts to access and coastal recreation, there will continue to be a few residential developments proposed in areas where residential structures have been routinely approved in the past. However, because of the constraints placed by Proposition S on providing visitor-serving commercial recreational opportunities in the Beach Overlay District, approving residential development in this beach fronting area will have a particularly adverse individual and cumulative impact on access and coastal recreational opportunities, by reducing the opportunities to develop visitor-serving uses in the Beach Overlay District. The impact caused by development of low priority uses along this beach front area are made more severe by the restrictions of Proposition S. The project, as proposed, will preclude redevelopment of the site with a visitor-serving commercial use and perpetuate residential use of the lot, further limiting the City to provide additional visitor-serving uses in this area.

D. Visitor-Serving Commercial Recreation

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

The applicant is proposing to demolish an existing 13-unit apartment building and construct a 5-unit condominium project. The proposed project site is a beach fronting property located between the pedestrian promenade (Ocean Front Walk) and the first public road (Appian Way) landward of the sea (see Exhibit No. 3).

In preliminary studies that led to the adoption of the Coastal Act, the Commission and the Legislature reviewed evidence that land uses directly adjacent to the beach were required to be regulated to protect access and recreation opportunities. These sections of the Coastal Act provide that the priority of new development near beach areas shall be given to uses that provide support for beach recreation. The Coastal Act requires that public coastal recreational facilities shall have priority over other types of development on any private land suitable for such use. Sections 30221 and 30222 give priority land use to visitor-serving commercial recreational facilities and general public recreational use public and private oceanfront and upland areas where necessary.

Santa Monica beach is the most heavily used beach in the Los Angeles area and possibly in the State. According to the 1992 certified LUP, approximately 20 million visitors in a given year will visit Santa Monica beach, which is approximately 2 miles in length, and the area between the Pier and Pico Boulevard is the most active recreation-oriented area of the Santa Monica beach. The area between the Pier and Pico Boulevard provides a number of recreational activities that attract visitors to the area, such as, volleyball courts, gymnastic and exercise equipment, children's play area, pedestrian promenade, a chess park, and bike path. As the population continues to increase, use of this area and the beach of the Santa Monica beach area will also increase, placing a greater demand on recreational facilities and increasing the need for visitor-serving commercial and recreational type uses.

The 10,105 square foot property is located in an area that contains a mix of multiple-family residential, visitor-serving commercial development and State Beach parking lots. Along The Promenade, between the Pier and Pico Boulevard, there are 5 visitor-serving establishments, 2 commercial businesses, 5 multiple-family residential buildings, 1 hotel, and 3 State beach parking lots providing approximately 256 public parking spaces (see Exhibit No. 8). Immediately to the south of Pico Boulevard is the 129-room hotel Casa del Mar, (CDP #5-99-127). Immediately inland of Appian Way, there are a few restaurants, motels and hotels, including the 340 rooms Loews Hotel (CDP #5-83-560) and the recently completed 175 room Le Merigot Hotel.

The proposed site is located along The Promenade and within close proximity to the Pier and beach hotels and, as situated, is suitable for visitor-serving commercial recreational

development. Preserving the subject lot for visitor-serving commercial recreational use would enhance coastal recreation and access in the area.

One of the basic Coastal Act goals is to maximize public recreation and access to the beaches. Permitting large lot residential development along the beach is clearly not maximizing public recreation and access. The proposed residential development is not a priority use and developing this lot with a use that will perpetuate residential use of the lot, will have adverse individual and cumulative impacts on coastal access and public opportunities for coastal recreation.

The applicant argues that the existing site is already developed with 13 residential units, and although the site will continue to be residential, the new development (5 units) will be less intense than the existing use. The Commission agrees that the site will be less intense and development with fewer units may reduce the adverse impact the residential development has on beach access and traffic; however, because the applicant is proposing to demolish the existing structure(s), the Commission must review the proposed development as new development and consider the impacts the proposed development will have on coastal resources as compared to any other development that could be located at the site (or no development), not as compared to what was previously there. Furthermore, by demolishing the existing residential structure on the site and improving the site with a new residential development on a site that, due to the location in relation to the visitor-serving Pier and the pedestrian promenade, is suitable for visitor-serving type uses, the proposed development could contribute to the establishment of a predominately residential beach front community and diminish the limited opportunities that are available for improving visitor-serving commercial recreational development to improve and maximize beach access.

Moreover, with more and more residential development encroaching into areas that attract large number of beachgoers, such as this area south of the Pier, the Commission has experienced conflicts between predominately residential communities and beachgoers. For example, in the north beach area, where it is predominately residential, and in other coastal communities, residents have tried to restrict the hours of operation of the beach and beach parking lots due to perceived conflicts. Cities, including the City of Santa Monica, have also proposed preferential parking zones in an attempt to minimize the conflicts between residents and beachgoers. Such conflicts usually result in limiting beach access to the general beach going public.

Beach parking in this area is limited and is currently heavily impacted by residents and beach goers because of the area's close proximity to the Pier and the mix of older residential development that lacks adequate on-site parking. Through the City's parking permit program, residents are allowed to purchase parking permits that allow them to park in the beach parking lots due to lack of on-site and street parking. With the issuance of residential parking permits and increase in beach attendance, allowing residential development will increase competition for public parking spaces in the surrounding area.

Allowing the beach fronting project site to be redeveloped with low priority residential use will have an adverse impact on access to, and recreational opportunities at, the beach by eliminating an area that could be developed with visitor-serving type uses, by generating non-visitor use type traffic along the beach area, and increasing competition for public on-street and public beach lot parking spaces between beach goers, residents and residential visitors. Therefore, the Commission finds that the proposed project is inconsistent with Section 30221 and 30222 of the Coastal Act and denies the permit.

E. Local Coastal Program

Section 30604 of the Coastal Act provides, in part:

(a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3...

In August 1992, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson Way (Beach Overlay District), except for the Santa Monica Pier, and excluding the Civic Center. On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications. The proposed project, which is located west of Neilson Way, is not covered under the 1992 certified LUP.

The area within the Beach Overlay District was excluded from certification due to Proposition S discouraging visitor-serving uses along the beach, resulting in an adverse impact on coastal access and recreation. In deferring this area the Commission found that, although Proposition S and its limitations on development were a result of a voters' initiative, with Proposition S in effect, the policies of the City's proposed LUP were inadequate to achieve the basic Coastal Act goal of maximizing public access and recreation to the State beach within the Beach Overlay District area, and they would not ensure that development would not interfere with the public's right of access to the sea.

In a previous Commission LUP action, in 1987 and prior to the passage of Proposition S, the Commission certified, with suggested modifications, a LUP that included the area presently known as the Beach Overlay District. In certifying the 1987 LUP, the Commission found that the LUP, as submitted, would result in adverse impacts on coastal access and recreational opportunities and, therefore, denied the LUP as submitted, and approved it with suggested modifications to mitigate any adverse impacts. One of the suggested modifications required that the subarea south of the Santa Monica Pier to Pico Boulevard shall be devoted to visitor-serving uses. Residential uses were permitted in the area, but only above the ground floor of visitor-serving uses. The Commission found that

the modification was necessary to assure that the lower priority land use of private residential development would not adversely impact the public beach parking supply and that higher priority recreational and visitor-serving use is not replaced by private residential development. The 1987 Commission certified LUP, with modifications, was never adopted by the City. Subsequently, in 1992 the City submitted a new LUP with policies covering the area between the Pier and Pico Boulevard. One of the policies proposed by the City reflected the Commission's 1987 suggested modification that prohibited residential development on the ground floor between the Pier and Pico Boulevard. However, by that time, the area was within the Beach Overlay District and the area was, therefore, deferred from certification for the reasons indicated above.

The subject site, because of its proximity to the Pier, pedestrian promenade, hotels and State beach parking lots, is suitable for visitor-serving commercial recreational development. Developing this site and others in the general area with low priority type uses, such as residential uses, will preclude this area from being developed with higher priority type uses, such as public coastal recreational facilities and visitor-serving commercial, which would enhance public beach access and recreational opportunities. The Commission, therefore, finds that the proposed project is inconsistent with the Chapter 3 policies of the Coastal Act and will prejudice the ability of the City to prepare Land Use Plan policies for the Beach Overlay District (deferred area) and a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a) of the Coastal Act. Therefore, the proposed project is denied.

F. CEQA

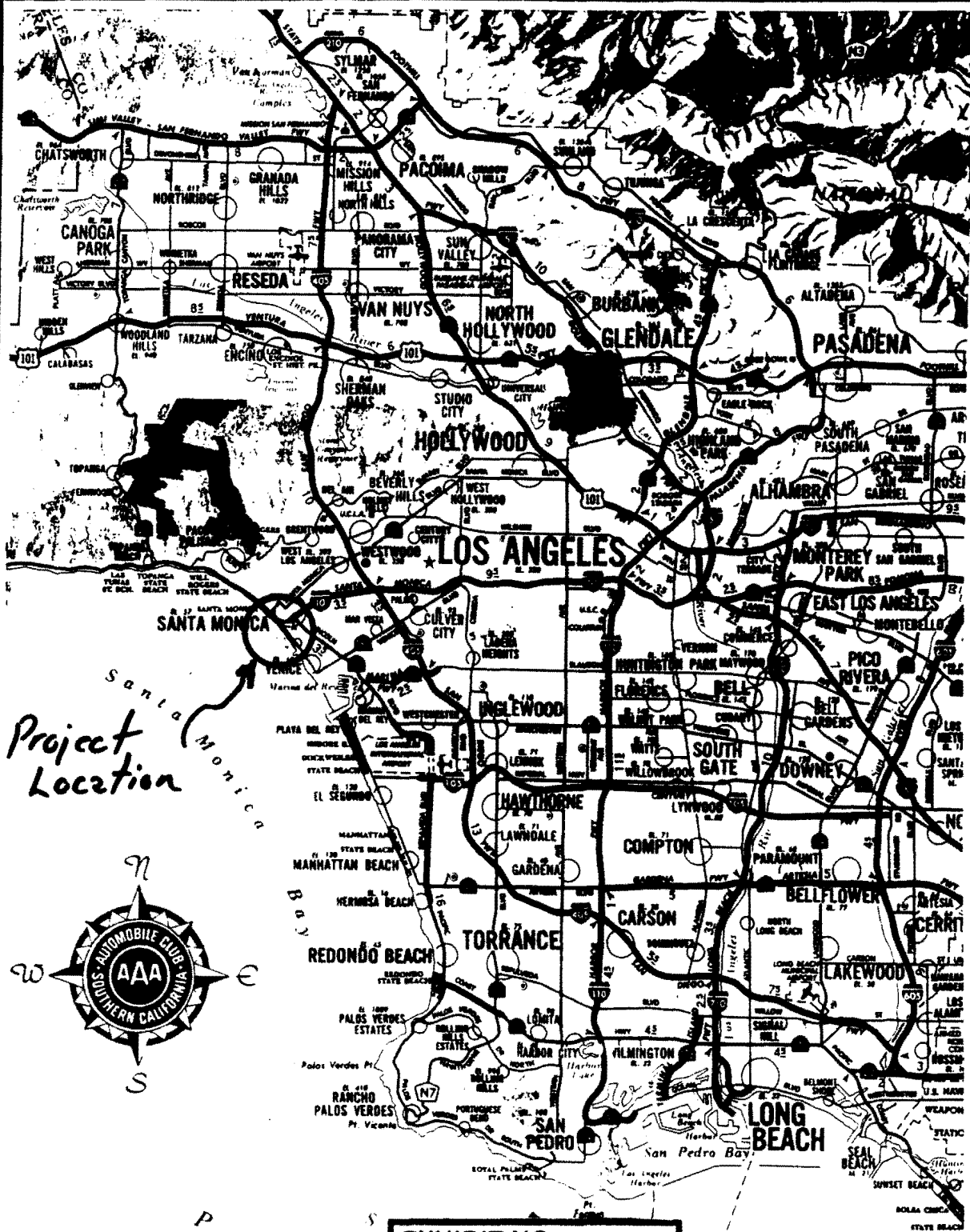
Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse impact, which the activity may have on the environment.

Under the City's current zoning (R3R—Medium Density Multiple Family coastal Residential District) for the project site, the applicant can develop the site with non-residential uses, which will have less of an adverse impact on coastal access and recreation, than the proposed use. The applicant has the option of developing the site with visitor-serving uses, such as, a Bed and Breakfast facility, bicycle and skate rental facilities, or a public park and playground. These type of developments would enhance access in the area by providing the public with visitor-serving type uses. Another option available to the applicant is to have the City rezone the property to allow additional visitor-serving uses, such as, restaurants and retail shops, which are prohibited under the current zoning.

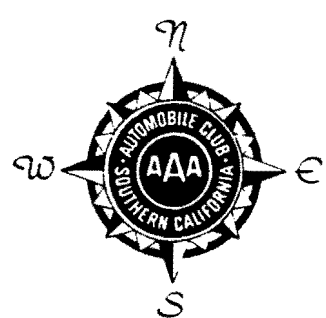
These development alternatives would increase coastal access and coastal recreational opportunities in this area consistent with the policies of the Coastal Act and will be less environmentally damaging than the proposed residential development.

Furthermore, as an additional option, under the current zoning, the applicant can renovate the existing residential structure(s) and continue the existing residential use. Although this residential option would preclude visitor-serving or recreational use of the site, renovation of the structures would be exempt from Coastal permit requirements, therefore, this option is a viable alternative for the property owner.

Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and the project cannot be found consistent with CEQA and the policies of the Coastal Act.



Project
Location



LOS ANGELES AREA

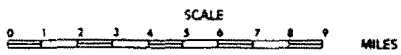


EXHIBIT NO. 1
Application Number 5-02-113
Vicinity Map
California Coastal Commission

HUNTINGTON BI

channel
O C E A

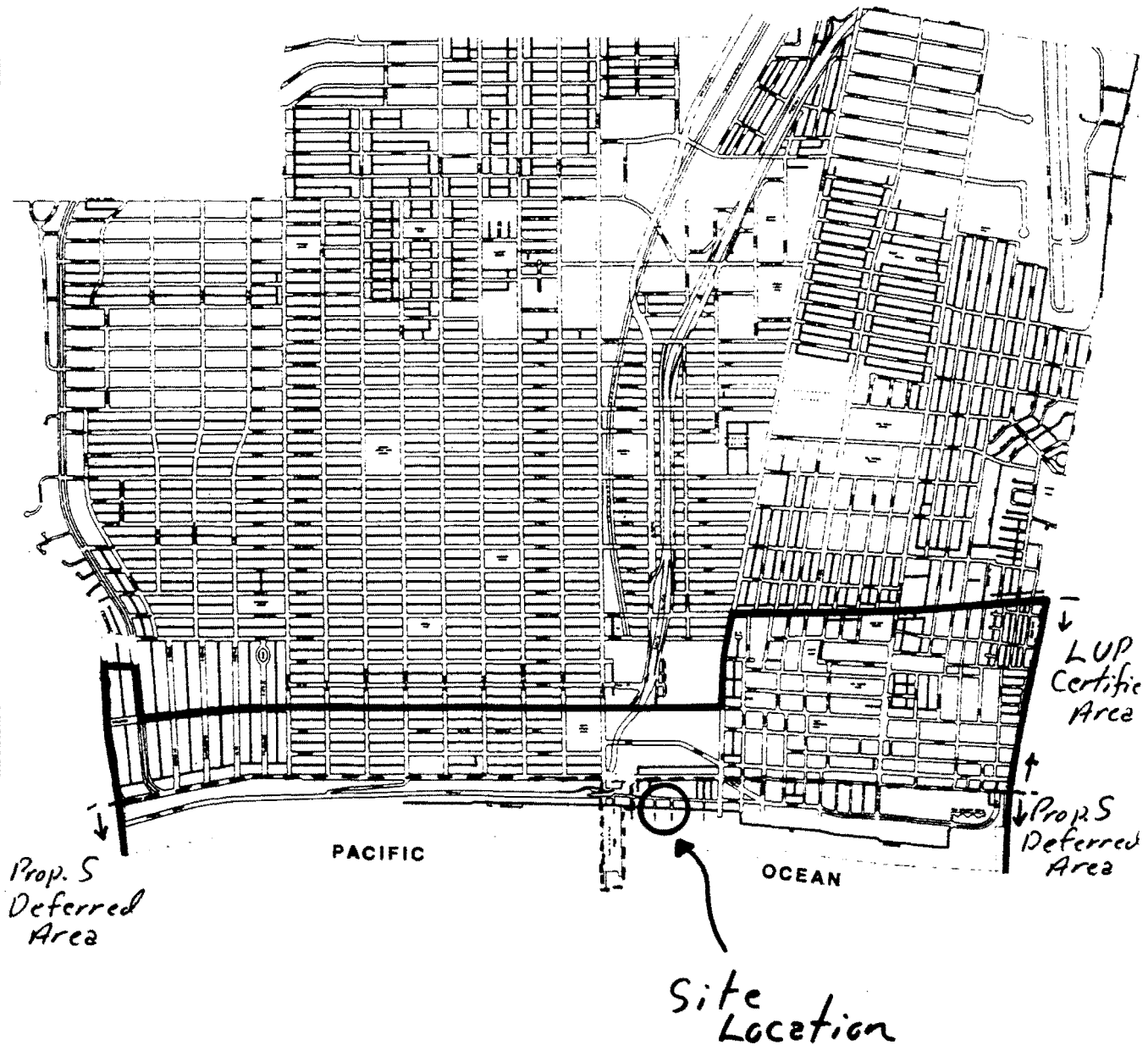


EXHIBIT NO. 2
Application Number
5-02-113
Coastal Zone
Boundary
California Coastal Commission

Romanos and Coleman
Landscape + Architecture
1667 Jando Dr
Torrance, CA 90290
310 455 7705 Tel
310 455 2744 Fax

Architect:
Nancy Coleman Romanos
CA License No. C26620
Issue Date 11/30/01
Revisions 3/15/02

LANDSCAPE DESIGN

1719 OCEAN FRONT WALK
SANTA MONICA, CALIFORNIA

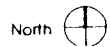


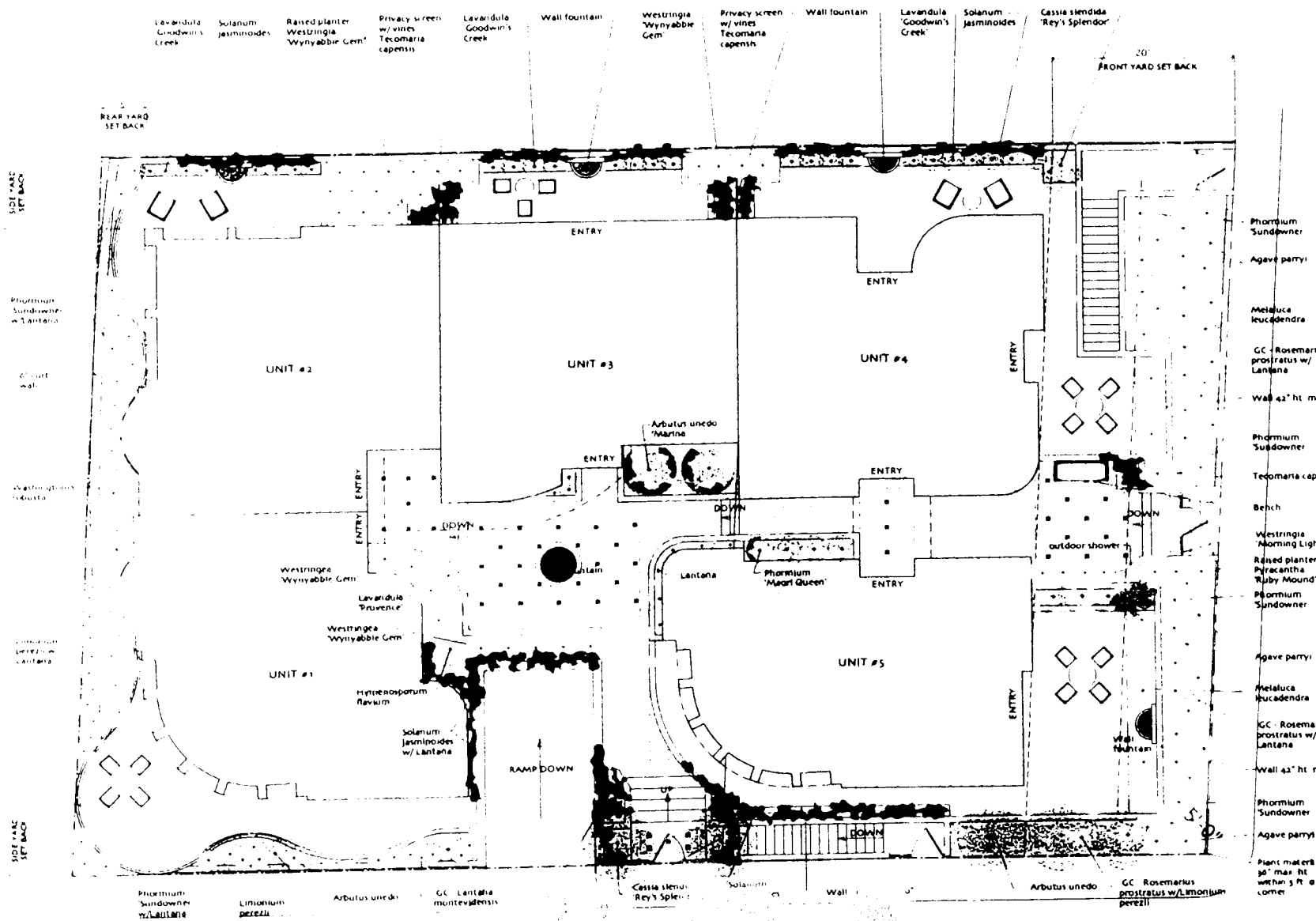
EXHIBIT NO. 4

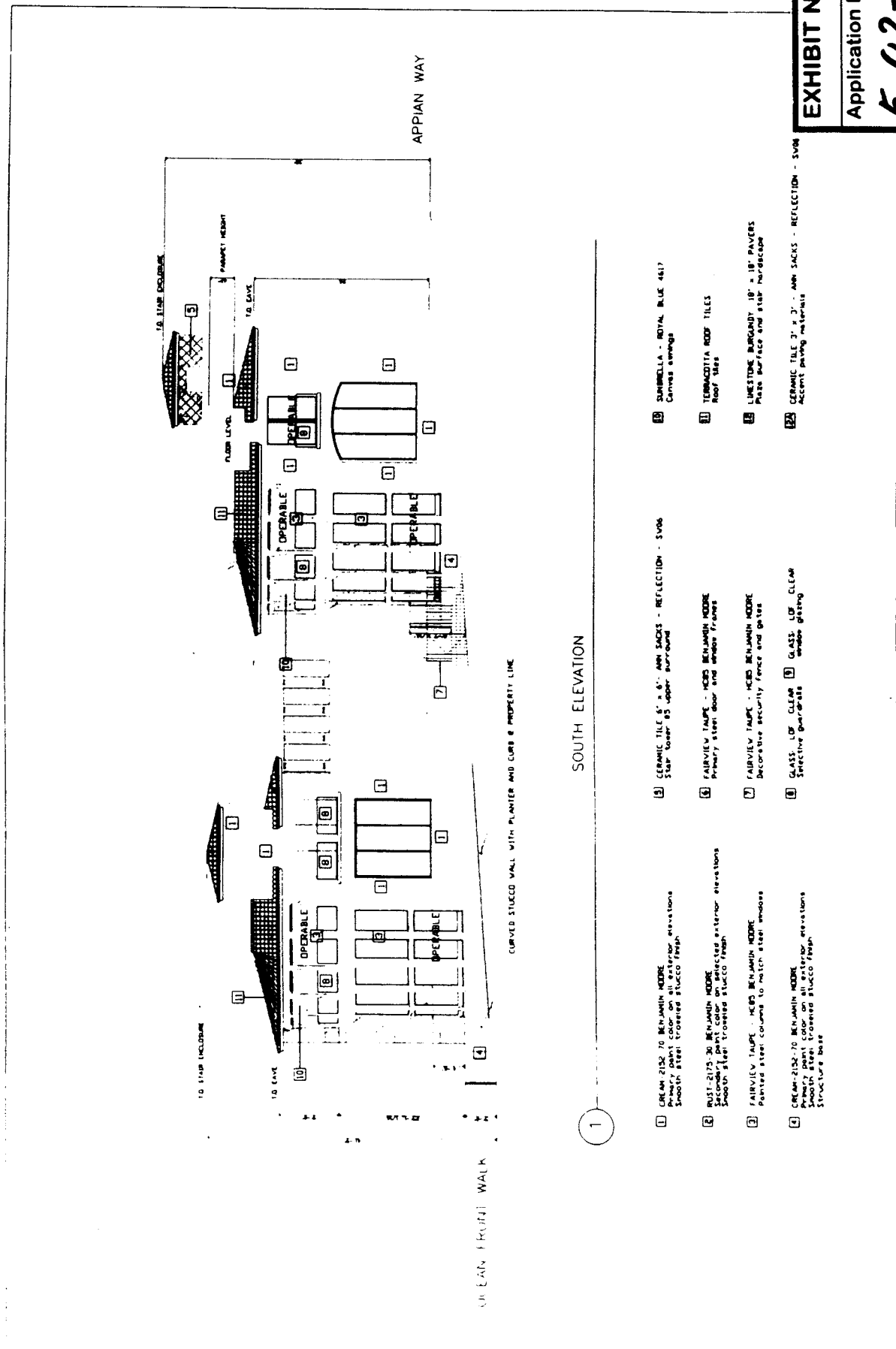
Application Number

5-02-113

Site Plan

California Coastal Commission





SOUTH ELEVATION

- 1 CREAM-2132-70 BENJAMIN MOORE
Primary paint color on all exterior elevations
Smooth steel troweled stucco finish
- 2 RUST-2175-30 BENJAMIN MOORE
Secondary paint color on selected exterior elevations
Smooth steel troweled stucco finish
- 3 FAIRVIEW TAPE - HERS BENJAMIN MOORE
Painted steel columns to match steel windows
- 4 CREAM-2132-70 BENJAMIN MOORE
Primary paint color on all exterior elevations
Smooth steel troweled stucco finish
Structure base
- 5 CERAMIC TILE 6" x 6" ANN SACKS - REFLECTION - SVO6
Star tower & upper surround
- 6 FAIRVIEW TAPE - HERS BENJAMIN MOORE
Primary steel door and window frames
- 7 FAIRVIEW TAPE - HERS BENJAMIN MOORE
Decorative security fence and gates
- 8 GLASS, LUF CLEAR
Selective guardrails
Window glazing
- 9 CERAMIC TILE 6" x 6" ANN SACKS - REFLECTION - SVO6
Canvas awnings
- 10 TERRACOTTA ROOF TILES
Roof tiles
- 11 Limestone Burghard - 18" x 18" Pavers
Paved surface and site hardscaping
- 12 CERAMIC TILE 3" x 3" ANN SACKS - REFLECTION - SVO6
Accent paving materials

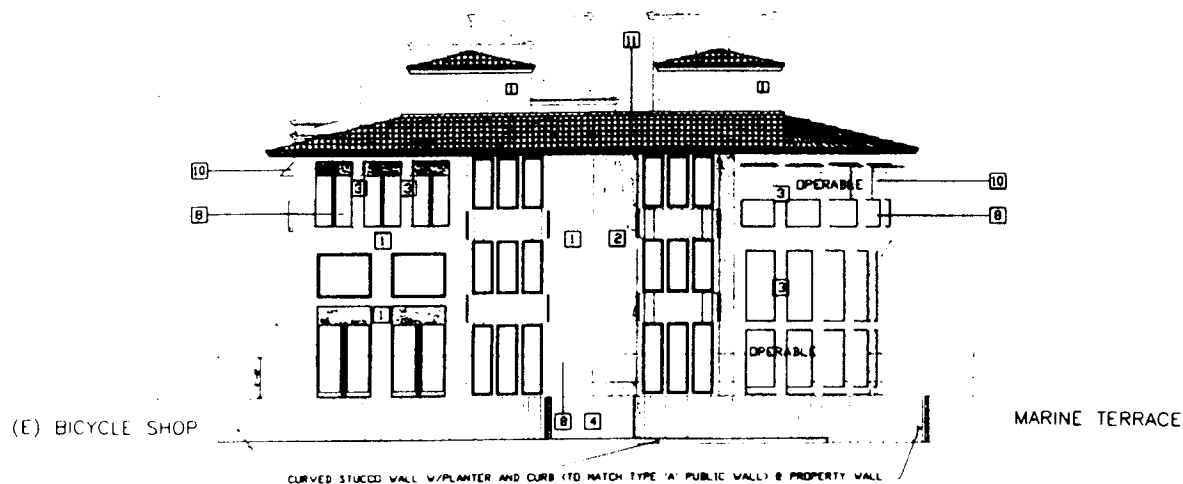
EXHIBIT NO. 5

Application Number

5-02-113

South Elevation

California Coastal Commission



WEST ELEVATION

1 CREAM-2152-70 BENJAMIN MOORE
Primary paint color on all exterior elevations
Smooth steel troweled stucco finish

2 RUST-2175-30 BENJAMIN MOORE
Secondary paint color on selected exterior elevations
Smooth steel troweled stucco finish

3 FAIRVIEW TAUPE - HCB5 BENJAMIN MOORE
Painted steel columns to match steel windows

4 CREAM-2152-70 BENJAMIN MOORE
Primary paint color on all exterior elevations
Smooth steel troweled stucco finish
Structure base

5 Star tower BS upper surround

6 FAIRVIEW TAUPE - HCB5 BENJAMIN MOORE
Primary steel door and window frames

7 FAIRVIEW TAUPE - HCB5 BENJAMIN MOORE
Decorative security fence and gates

8 GLASS - LOF CLEAR Selective guardrails

9 GLASS - LOF CLEAR window glazing

10 SUNBRELLA - ROYAL BLUE 4617
Canvas awnings

11 TERRACOTTA ROOF TILES
Roof tiles

12 LIMESTONE BURGUNDY - 18" x 18" PAVERS
Paved surface and stair hardscape

13 CERAMIC TILE 3' x 3' - ANN SACKS - REFLECTION - SW66
Accent paving materials

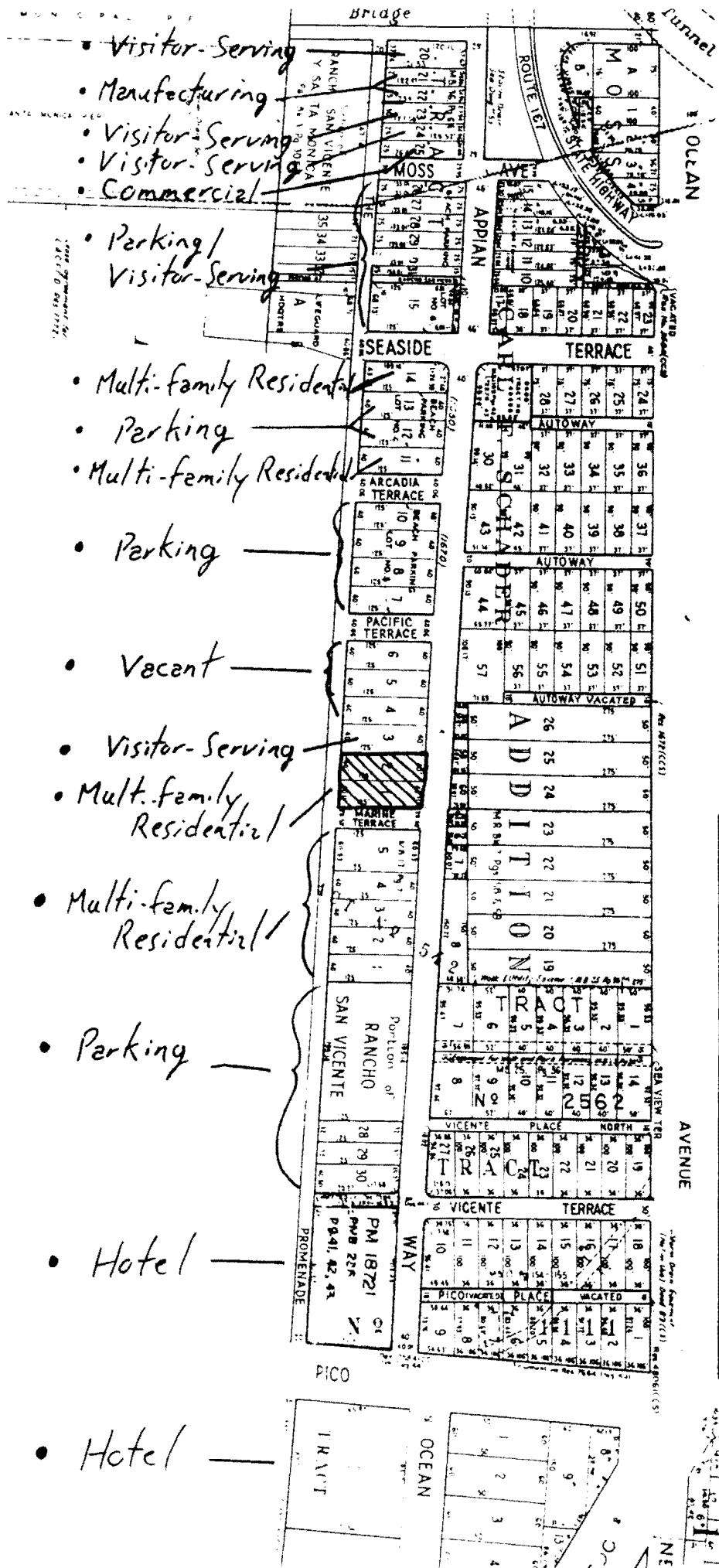
EXHIBIT NO. 6

Application Number

5-02-113

West Elevation

California Coastal Commission



- Visitor-Serving
- Manufacturing
- Visitor-Serving
- Visitor-Serving
- Commercial

- Parking/ Visitor-Serving

- Multi-family Residential
- Parking
- Multi-family Residential

- Parking

- Vacant

- Visitor-Serving
- Multi-family Residential

- Multi-family Residential

- Parking

- Hotel

- Hotel


 Project Site

EXHIBIT NO.	8
Application Number	5-02-113
Existing Uses	along Promenade
California Coastal Commission	

RECEIVED
South Coast Region

JUL 18 2002

STATE OF CALIFORNIA
COASTAL COMMISSION

CALIFORNIA
COASTAL COMMISSION

ORIGINAL


1719 OCEAN, INCORPORATED
COMMUNITY OF SANTA MONICA
COUNTY OF LOS ANGELES

Application No. 5-02-113

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Tuesday
June 11, 2002
Agenda Item No. 12.h.

The Queen Mary
1126 Queens Highway
Long Beach, California

EXHIBIT NO. 3
APPLICATION NO. 5-02-113 R
Transcripts from June 2002 Hearing
 California Coastal Commission

PRISCILLA PIKE

Court Reporting Services

A P P E A R A N C E S

COMMISSIONERS

Sara Wan, Chair
 William A. Burke
 Christina L. Desser
 Shirley Dettloff
 Patrick Kruer
 Cynthia McClain-Hill
 Patricia McCoy
 Pedro Nava
 Mike Reilly
 Deborah Ruddock, Alternate

Pat Neal, Business, Transportation & Housing Agency
 Joan Dean, Trade & Commerce Agency

STAFF

Peter Douglas, Executive Director
 Ralph Faust Chief Counsel
 Dan Olivas, Deputy Attorney General
 Deborah Lee, District Director
 Teresa Henry, Coastal Program Manager
 Al Padilla, Coastal Program Analyst

I N D E X T O S P E A K E R S

<u>STAFF</u>	<u>Page Nos.</u>
Coastal Program Manager Henry, Staff Report.....	3,8,11
Coastal Program Analyst Padilla, Staff Report.....	5
Chief Counsel Faust.....	9,19,22,24,27
Executive Director Douglas.....	13,18,22,27
District Director Lee.....	17

PUBLIC HEARING (Omitted from transcript)

COMMISSIONERS

Kruer.....11,15,26
 McClain-Hill.....14,16,19,21
 Nava.....21,24
 Reilly.....12,16,18,20,25
 Wan.....16,20,26

ACTION

Motion by Nava..... 15
 Vote..... 26
 Amendment by Reilly.... 20
 Vote..... 22

CONCLUSION..... 28

-000-

1 California Coastal Commission

2 June 11, 2002

3 1719 Ocean, Incorporated -- Application No. 5-02-113

4 **Fragmented Portion, Only**

5 * * * * *

6 4:55 p.m.

7 CHAIR WAN: Okay, that brings us to 12.h.

8 [Pause in proceedings.]

Okay, staff, let's go to 12.h.

1 COASTAL PROGRAM MANAGER HENRY: The next item,
11 Item 12.h., is Application 5-02-133, is the application of
1719 Ocean, Incorporated. It is the application to demolish
an existing 13-unit apartment building, and to construct a
five-unit condominium, residential condominium building, with
11 parking spaces on the ocean front in Santa Monica,
specifically at 1719 Ocean Front Walk in Santa Monica.

17 Staff is recommending denial of the proposed
18 project, and therefore the applicant is not in agreement with
19 the staff recommendation. The reason for staff's recommend-
20 ation of denial is because the perpetuation of residential
21 use along the ocean in Santa Monica, adjacent to the Santa
22 Monica Pier, just south of the Santa Monica Pier, is a use
23 that is a low-priority use under the Coastal Act.

24 The use of this site for visitor-serving
25 commercial use is a higher priority use under the Coastal Act

1 and staff is therefore recommending that this site, if it is
2 redeveloped, that it be redeveloped with a visitor-serving
3 use.

4 Under the current zoning, the City of Santa Monica
5 has a certified Land Use Plan but the location of the project
6 site, just south of the pier, is actually white-holed. The
7 city white-holed this beach overlay area due to a voter
8 initiative in the late '80s early '90s, in which the citizens
9 of Santa Monica did not like what they felt was a prolif-
10 eration of large hotels and large restaurants, and therefore
11 the Proposition S prohibits hotels, motels, restaurants over
12 2000-square feet, and with that prohibition, the Commission
13 felt that they could not certify the Land Use Plan for
14 beach overlay area, because those are the types of visitor-
15 serving uses that are usually encouraged along the beach
16 front, and the pier, and that the city did not present
17 alternative for other Coastal Act priority uses, and
18 therefore the beach overlay area, including the area of the
19 proposed project is a white-hole area. However, the
20 Commission has a record of requiring visitor-serving uses in
21 this area south of the pier.

22 Adjacent to the project site residential uses were
23 demolished. The Commission required that that site be
24 redeveloped with non-residential uses.

25 Adjacent to the project site is an existing

1 bicycle skate rental type use, as well as a tennis court that
2 was a temporary use, and the Commission also approved a bed
3 and breakfast use at that site.

4 Under the current zoning of the property, which is
5 R-3, high density residential, the applicant could construct
6 the types of uses that staff is recommending. The R-3 zoning
7 would allow a mixed use, would allow visitor-serving
8 commercial on the ground floor, with residential uses. It
9 would allow a bed and breakfast not to exceed four units. It
10 would also allow a use similar to what is next door, bicycle
11 or skate rental, as well as neighborhood grocery uses.

12 So, the current zoning would allow the types of
13 uses that staff is recommending, a use that has a higher
14 priority under the Coastal Act, and therefore staff is
15 recommending that you deny the perpetuation of the lower
16 priority, private residential use in this stretch of Santa
17 Monica very close to the Santa Monica Pier.

18 We do have slides of this area, and the staff
19 analyst Al Padilla will show the slides at this time.

20 COASTAL PROGRAM ANALYST PADILLA: The first slide
21 is a 1986 aerial that gives you a perspective of the Santa
22 Monica beach area. The project site is located, approxi-
23 mately in this location here, in the south beach area.

24 The Santa Monica is, basically, divided by the
25 pier. The north beach area continues here, and the south

1 beach is south of the pier, heading out this way.

2 South beach area is characterized by a number of
3 residential multifamily projects in the area, along with
4 hotels, parking lots, and some visitor-serving establishments
5 here near the foot of the pier.

6 North of the pier is characterized by single-
7 family residences on small lots, narrow lots, that extend
8 from this area of the pier all the way to the north boundary
9 line.

10 This is the project site, the multifamily
11 structure that is being proposed to be torn down and then
12 replaced with a five-unit condo.

13 Just to the north of this is the bike rental shop,
14 and the vacant lot that the Commission approved for a
15 temporary tennis court, and then subsequently approved a bed
16 and breakfast, which would have demolished the existing
17 residential structures that are no longer there, along with
18 the bike and skate shop.

19 To the south of the project site is the Sea
20 Castle, which is a multi-residential project which was
21 damaged in the Northridge earthquake, then rebuilt with the
22 number of units that were there. And, in front of the
23 structures here is the pedestrian promenade.

24 This shot is looking south of the project site,
25 showing the bike path and skate path, along with hotels that

1 are there, Shutters Hotel here, and the former Pritikin
2 Center, which converted to a luxury hotel.

3 This is a shot in front of the project site
4 showing the bike rental shop and the pedestrian promenade,
5 which was recently improved by the city to encourage visitor
6 serving, or visitors to use this area into the south beach,
7 which the city felt was under utilized. People were using,
8 basically, the pier and not heading into the south area, so
9 the city did a number of improvements to try to encourage use
10 of this area.

11 This is looking north of the project site, along
12 the promenade. Other improvements that the city has done was
13 the Chess Park in front of this multi-residential project
14 here. The other multi-residential project in this area is
15 located here, the Chess Park here, and the pier is over in
16 this location.

17 Other improvements that the city has done, this is
18 the Muscle Beach area. The city recently improved this area,
19 putting gymnastic equipment here, children play equipment.
20 Beach volleyball courts are located here, then adjacent to
21 the pier.

22 A view looking further south towards the pier,
23 another visitor establishment here is a little cafe
24 restaurant type take-out. Behind this is a beach parking
25 lot.

1 And, then this is at the foot of the pier. This
2 is where most of the visiting-serving establishments are
3 located. There are approximately seven establishments,
4 ranging from small take-out to a cafe, along with other
5 rental shops.

6 That concludes the slides.

7 CHAIR WAN: Does that conclude staff's
8 presentation?

9 COASTAL PROGRAM MANAGER HENRY: Yes, that
10 concludes staff's presentation.

11 CHAIR WAN: Any ex parte communications?

12 [No Response]

13 Seeing none, I have one speaker slip, the
14 applicant if you want to come forward.

15
16 [Applicant's Presentation -- not in this transcript]

17
18 CHAIR WAN: With that, I will close the public
19 hearing, and return to staff.

20 COASTAL PROGRAM MANAGER HENRY: Thank you,
21 Chairman Wan, just a few comments from staff.

22 The applicants stated that there are extensive
23 visitor-serving uses in the area. As you saw in the slides,
24 there are both residential uses and visitor-serving uses in
25 the area. We believe that the area, at least the ground

1 floors of this area, should be reserved for higher priority
2 visitor-serving commercial uses, which the city would allow
3 under the current zoning.

4 As we stated, the types of uses that he could have
5 is the small bed and breakfast. He could also have a small
6 grocery store, as well as a bike or skate rental shop.

7 And, another reason that we are recommending the
8 visitor-serving use, as opposed to the residential use, as
9 you are well aware, there are conflicts with residents who
10 are adjacent to the beach. As there are the public
11 amenities, and as well as the promenade, the pedestrian
12 promenade, the more residential uses you have adjacent to
13 these types of public recreational uses, there are conflicts,
14 and therefore we believe that this area should be developed
15 with higher priority visitor-serving uses to be consistent
16 with the priority uses under the Coastal Act.

17 And, that concludes the staff's comments.

18 CHIEF COUNSEL FAUST: Madam Chair.

19 CHAIR WAN: Yes, Mr. Faust.

20 CHIEF COUNSEL FAUST: I wanted to add some brief
21 comments after the hearing, and I waited until after the
22 hearing, because there is a significant policy disagreement
23 here, and I wanted the Commission to have the benefit of the
24 discussion of both sides of that policy disagreement.

25 I don't have anything to say about the law, with

1 respect to that policy disagreement. The staff is articu-
2 lating a position that this Commission has taken in the past,
3 and the staff has taken in the past, with respect to visitor-
4 serving uses in this area.

5 The applicant has some policy perspectives of his
6 own, but also I think it is important to note that the city
7 is the entity with which the actual disagreement exists
8 between the Commission and the city. And, this applicant is
9 in a somewhat peculiar situation because the development that
10 they are demolishing is a residential development, apparently
11 vacant at this point, and that raises some unusual and
12 particular problems.

13 Generally, in the State of California, and
14 particularly in the City of Santa Monica, with respect to
15 what kinds of uses, and how they go about developing those
16 uses, for all of those reasons -- and let me also add that
17 Mr. Olivas from the Attorney General's Office and myself,
18 really just became aware of the applicant's concerns. We
19 referenced their letter. We have talked to the applicant's
20 representative.

21 Our recommendation, basically, is as follows: that
22 if the Commission is inclined as a matter of policy to agree
23 with the applicant and disagree with staff, then that is
24 fine, go ahead and approve the project with whatever
25 conditions are appropriate, and that would be the end of it.

1 If, on the other hand, the Commission is inclined
2 to agree with staff on the policy, there are some legitimate
3 legal issues that we would like further opportunity to review
4 before the Commission makes a final decision.

5 And, so, if the Commission is inclined to agree
6 with staff, we would recommend that you continue this matter
7 to give us the opportunity to review those legal issues.

8 CHAIR WAN: Commissioner Kruer.

9 COMMISSIONER KRUEER: There was a comment about the
10 Alice Act, and I think the Alice Act says that if you want to
11 discontinue being in the rental business, you can. That
doesn't mean that you can build five condominiums there.

12 And, the issue -- the concern I have is if this is
13 vacant, these 13 units, is any of it -- I was going to ask
14 staff is it because of -- is there anything, because it is
15 uninhabitable? earthquake standards? or anything like that?
16 because that would be a different issue. Or is it somebody
17 just moved them out?
18

19 COASTAL PROGRAM MANAGER HENRY: Not that we are
20 aware of.

21 COMMISSIONER KRUEER: Because, if it is uninhabit-
22 able, that is a different issue.

23 And, then, this project here then would come in
24 under new development, because it is going for a less -- it
25 seems to me it is new development, and it is coming in for a

1 less intent use, is that the way you look at it?

2 COASTAL PROGRAM MANAGER HENRY: It is new
3 development because the existing use is being demolished, and
4 a new five-unit condominium is going to replace it. It is
5 less intense, in terms of the number of units, but it is
6 perpetuating a use that we believe is not a priority use
7 under the Coastal Act.

8 COMMISSIONER KRUE: So, if it is less intense,
9 then obviously we are not maximizing recreational facilities
10 and public access, and issues like that, is that what you are
11 saying?

12 COASTAL PROGRAM MANAGER HENRY: We are saying it
13 is not maximizing public recreational activities because
14 is perpetuating residential use, as opposed to a visitor
15 serving commercial use.

16 COMMISSIONER KRUE: Okay.

17 Thank you, Madam Chair.

18 CHAIR WAN: Commissioner Reilly.

19 COMMISSIONER REILLY: Question of staff.

20 If the Commission were inclined to approve this
21 project, would staff want time to work on conditions?

22 COASTAL PROGRAM MANAGER HENRY: Well, in terms of
23 special conditions, one was offered by the applicant, which
24 is a payment into a fee to establish the types of visitor-
25 serving uses that we have identified as necessary. That was

1 imposed on a previous project that the applicant represented,
2 we would include.

3 COMMISSIONER REILLY: Are there any other
4 conditions that staff would need time to work on?

5 COASTAL PROGRAM MANAGER HENRY: Other conditions
6 that we would -- as far as the parking goes --

7 COMMISSIONER MC CLAIN-HILL: The question is --

8 COASTAL PROGRAM MANAGER HENRY: -- it has adequate
9 parking --

10 EXECUTIVE DIRECTOR DOUGLAS: Madam --

11 COMMISSIONER MC CLAIN-HILL: -- would staff, were
12 the Commission inclined to approve, would staff wish to have
13 time to work on specific conditions relative to an approval?

14 EXECUTIVE DIRECTOR DOUGLAS: Let me discuss that
15 with staff, as you hear -- is there anymore testimony to be
16 heard?

17 CHAIR WAN: No.

18 EXECUTIVE DIRECTOR DOUGLAS: That's it.

19 CHAIR WAN: Yes.

20 EXECUTIVE DIRECTOR DOUGLAS: I am not sure that we
21 are going to be able to craft those for you right here on the
22 spot. What we would need is more time to discuss that. We
23 could trail the item, which is what I would suggest.

24 COMMISSIONER REILLY: Where are we with legal --

25 EXECUTIVE DIRECTOR DOUGLAS: If you are inclined

1 to --

2 COMMISSIONER REILLY: -- dates on this thing?

3 EXECUTIVE DIRECTOR DOUGLAS: We have no timing
4 problems.

5 COMMISSIONER REILLY: Well, Madam Chair, I am
6 inclined -- I think that the applicant's representative makes
7 a pretty compelling argument on this one, and I think they
8 are caught in a bind between the Commission.

9 And, as I see it, it is a residential trade for
10 residential, and even though that is not our top priority, it
11 is much less intense. It is not -- we certainly are not
12 prohibited from allowing residential, even though it is not
13 the highest priority.

14 If other members of the Commission are inclined to
15 want to approve this, too, then maybe we need to kick it a
16 month to give staff time to work out the conditions.

17 CHAIR WAN: Commissioner McClain-Hill.

18 COMMISSIONER MC CLAIN-HILL: I would say that
19 we've got an awful of time left today, and staff doesn't seem
20 to be at the ready, at least their reaction thus far doesn't
21 suggest that there is a lengthy list of special conditions
22 that they need to work on, so I wonder if it is possible to
23 trail and get some feedback from staff to see whether they
24 can condition the project today?

25 EXECUTIVE DIRECTOR DOUGLAS: We'd need to talk

1 about that, and we don't have the opportunity right now to
2 talk about whether or not we could still do that today.

3 But, if you could trail it, then we'll discuss
4 that and then we will come back later today, and tell you
5 whether or not we can craft something at this meeting, or
6 that we would recommend a postponement to a subsequent
7 meeting.

8 CHAIR WAN: Commissioner Nava.

9 [MOTION]

10 COMMISSIONER NAVA: Yeah, I am going to make a
11 motion -- if I can find it.

12 I move the Commission approve Coastal Development
13 Permit No. 5-02-113 for the development proposed by the
14 applicant, and recommend a "No" vote.

15 COMMISSIONER KRUER: I'll second that.

16 CHAIR WAN: Moved by Commissioner Nava, seconded
17 by Commissioner Krueer.

18 COMMISSIONER NAVA: Just briefly, I think we've
19 got an analysis by the staff, with respect to their
20 evaluation of this. You've got, you know, 13 units that at
21 least provided some kind of housing for people regardless of
22 how it was that it became vacant.

23 And, oftentimes what we see are buildings are made
24 vacant so that there is a compelling argument for an
25 additional use. Approval of this project eliminates 13 units

1 in exchange for five-unit condominiums on the sand, that
2 undoubtedly will sell for \$1.4 million each, and I think that
3 we have some issues with respect to the kind of use that the
4 Coastal Act encourages, in this particular area.

5 So, I am supporting staff.

6 CHAIR WAN: Any other comments?

7 [No Response]

8 I guess we could call the roll. I would kind of
9 -- I am going to make one suggestion, and then I'll call the
10 roll.

11 We've got what appears to be a divided Commission,
12 clearly some want to approve this, some want to deny it. I
13 am on the side of the denial, but it doesn't really matter.
14 If we deny it, I believe that our counsel asks that if we are
15 planning on denying it, that we continue it.

16 If we want to approve it, there is some questions
17 with regards to what the conditions ought to be, so I don't
18 know why we don't continue this?

19 Would somebody make a motion to continue?

20 [No Response]

21 COMMISSIONER REILLY: Call the question.

22 CHAIR WAN: Commissioner McClain-Hill.

23 COMMISSIONER MC CLAIN-HILL: I am actually not
24 going to make the motion to continue. Somebody else can do
25 that, if they choose to, but I would just as soon vote on

1 Commissioner Nava's motion.

2 I mean, frankly, from my perspective, continuance
3 is not without cost or consequence, and to parties before us,
4 and to the extent that we can make decisions, we ought to
5 make them.

6 CHAIR WAN: Okay.

7 COMMISSIONER MC CLAIN-HILL: I've asked staff if
8 -- I mean, we've asked staff a couple of times, if there are
9 any, you know, conditions that they would place on this
10 project that would require them to take significant time to
11 develop?

12 They haven't told us that there are, and I
13 suspect, frankly, that there aren't. So, I'd just as soon
14 approve the project, unless our staff tells us that there are
15 some significant hurdle that they need to take time to
16 condition today.

17 And, I am not comfortable just kicking it off to
18 another presentation, in another month, as if some how it
19 isn't an inconvenience to the applicant.

20 CHAIR WAN: Staff, and then I am going to call the
21 roll.

22 DISTRICT DIRECTOR LEE: Madam Chair, I am sorry.

23 I think the difficulty that staff was having, in
24 responding to your question, is that we did not believe there
25 were a number of conditions. If the Commission is interested

1 in supporting the application, your standard water quality
2 provisions, and the payment to the City of Santa Monica's
3 Beach Access Recreation Mitigation Fund would be the only two
4 conditions that we would think would be necessary.

5 Commissioner Nava expressed, I think, the staff's
6 basic concern. It is the policy question that we believe the
7 visitor-serving use accommodation is the priority use. We
8 think there were other alternatives that the applicant could
9 have proposed to accommodate visitor-serving uses, along with
10 residential on the upper floors, but that is the Commission's
11 decision to make on that policy question, as to whether or
12 not to reject the application --

13 COMMISSIONER REILLY: So, in the event that the
14 application is approved, staff has incorporated those
15 conditions?

16 EXECUTIVE DIRECTOR DOUGLAS: No, we are still --

17 DISTRICT DIRECTOR LEE: Our staff recommendation
18 is that you reject the application --

19 COMMISSIONER REILLY: I understand that, but in
20 the event that it is approved, those conditions would be
21 incorporated into the approval.

22 DISTRICT DIRECTOR LEE: No.

23 EXECUTIVE DIRECTOR DOUGLAS: Unless --

24 COMMISSIONER REILLY: Is that clear.

25 EXECUTIVE DIRECTOR DOUGLAS: -- that is in the

1 motion --

2 CHIEF COUNSEL FAUST: Madam --

3 COMMISSIONER MC CLAIN-HILL: Those are the
4 conditions you would wish that we would attach to a motion to
5 approve per applicant?

6 EXECUTIVE DIRECTOR DOUGLAS: That is correct.

7 COMMISSIONER MC CLAIN-HILL: Is that the
8 appropriate way to say it?

9 EXECUTIVE DIRECTOR DOUGLAS: That's correct.

10 CHAIR WAN: However, we have a motion to deny.

11 EXECUTIVE DIRECTOR DOUGLAS: Well, no.

12 CHIEF COUNSEL FAUST: No, the appropriate motion
13 in this situation where staff is recommending denial, needs
14 to be moved to approve the development per applicant, with
15 the maker of the motion recommending a "No" vote --

16 COMMISSIONER MC CLAIN-HILL: With the suggested --

17 CHIEF COUNSEL FAUST: -- so what I would suggest,
18 for the convenience of all of the Commission, is that the
19 maker of the motion agree to attach those conditions to the
20 motion --

21 COMMISSIONER MC CLAIN-HILL: Right.

22 CHIEF COUNSEL FAUST: -- without changing the
23 recommendation in any way, but attach those conditions to the
24 motion, so those conditions are carried, if the motion does
25 carry, and then the Commission should go on with its work.

1 [MOTION]

2 COMMISSIONER REILLY: If staff can incorporate
3 that, then I would so move to amend the motion to include
4 those conditions.

5 CHAIR WAN: Can't do that.

6 EXECUTIVE DIRECTOR DOUGLAS: No, no --

7 CHAIR WAN: I don't believe you can do that.

8 EXECUTIVE DIRECTOR DOUGLAS: -- you would have to
9 amend the motion that is on the floor --

10 COMMISSIONER REILLY: That is what I am doing.

11 EXECUTIVE DIRECTOR DOUGLAS: -- which is per
12 applicant, and --

13 COMMISSIONER REILLY: No, it is not per applic

14 COMMISSIONER MC CLAIN-HILL: It is per staff.

15 EXECUTIVE DIRECTOR DOUGLAS: -- it is per
16 applicant. Maker of the motion is recommending a "No" vote.

17 CHAIR WAN: That's right.

18 EXECUTIVE DIRECTOR DOUGLAS: And, so what you
19 would do is amend the motion on the floor to add those
20 conditions, and then whatever you would recommend on that.

21 COMMISSIONER MC CLAIN-HILL: That's what he said.

22 COMMISSIONER REILLY: That is what I just tried to
23 do. I want to amend it to add those conditions.

24 COMMISSIONER MC CLAIN-HILL: Can we clarify --

25 CHAIR WAN: Let's get some clarification here.

1 COMMISSIONER MC CLAIN-HILL: Okay, first can we --
2 Commissioner Nava, can you simply restate your motion?

3 COMMISSIONER REILLY: That is what I --

4 CHAIR WAN: It's the one in the report.

5 COMMISSIONER MC CLAIN-HILL: It is per applicant,
6 and you were recommending a "No" vote, is that correct?

7 CHAIR WAN: Correct.

8 COMMISSIONER NAVA: My motion came straight off of
9 page 2. I move that the Commission approve Coastal
10 Development Permit No. 5-02-113, for the development proposed
11 by the applicant, and recommend a "No" vote, and that was
12 seconded by Commissioner Kruer.

13 COMMISSIONER MC CLAIN-HILL: Then I think that
14 Commissioner Reilly is seeking to amend the application to
15 include these standard water quality conditions, and the
16 condition with respect to payment into a mitigation fee.

17 COMMISSIONER REILLY: That's correct.

18 COMMISSIONER MC CLAIN-HILL: And, I "second" that
19 amendment.

20 COMMISSIONER NAVA: Okay, so there --

21 COMMISSIONER MC CLAIN-HILL: So, we need to first
22 vote on the amendment, and then vote on the underlying
23 motion, and the vote on the amendment would be recommending a
24 "Yes" vote.

25 CHAIR WAN: Is that --

1 Mr. Faust, do you want to comment on that as being
2 the appropriate way?

3 CHIEF COUNSEL FAUST: That will get the Commission
4 to where it needs to go, in terms of determining its will on
5 this particular matter.

6 The first matter would be Commissioner Reilly's
7 amendment motion to attach the two conditions, then you would
8 get to the main motion.

9 CHAIR WAN: Mr. Douglas.

10 EXECUTIVE DIRECTOR DOUGLAS: Just for the record,
11 there are regular standard conditions that would have to be
12 added, as well as two special conditions which are the ones
13 that you just --

14 COMMISSIONER REILLY: My motion is standard
15 conditions, plus the two special ones.

16 EXECUTIVE DIRECTOR DOUGLAS: Okay.

17 COMMISSIONER MC CLAIN-HILL: And, I have
18 "seconded" that.

19 CHAIR WAN: Okay, I think we all know.

20 On the amending motion, would you call the roll.

21 SECRETARY GOEHLER: Commissioner Dettloff?

22 COMMISSIONER DETTLOFF: Yes.

23 SECRETARY GOEHLER: Commissioner Krueer?

24 COMMISSIONER KRUEER: Yes.

25 SECRETARY GOEHLER: Commissioner McClain-Hill?

1 COMMISSIONER MC CLAIN-HILL: Yes.

2 SECRETARY GOEHLER: Commissioner Nava?

3 COMMISSIONER NAVA: Yes.

4 SECRETARY GOEHLER: Commissioner Ruddock?

5 COMMISSIONER RUDDOCK: Yes.

6 SECRETARY GOEHLER: Commissioner Reilly?

7 COMMISSIONER REILLY: Yes.

8 SECRETARY GOEHLER: Commissioner Burke?

9 COMMISSIONER BURKE: Yes.

10 SECRETARY GOEHLER: Chairman Wan?

11 CHAIR WAN: Yes.

12 Now, on the --

13 SECRETARY GOEHLER: Eight, zero.

14 CHAIR WAN: Okay, before we go to the main motion,
15 Mr. Douglas.

16 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, I just
17 wanted to supplement the point that Deborah made relative to
18 the policy decision that you are making here.

19 And, that is that our position is that visitor-
20 serving commercial uses here are important in this location,
21 in this site, as well as the lowering of density.

22 I think the Commission has been -- at least the
23 staff has been urging that there be higher densities in these
24 urban areas, because it does provide a level of housing. By
25 reducing the density, that is changing or lowering the stock

1 of available housing.

2 So, that is something that you have to take into
3 consideration, as well.

4 CHAIR WAN: Okay.

5 Maker of the motion is recommending a "No" vote
6 which would result in a denial of the project.

7 Would you call --

8 Yes, Commissioner Nava.

9 COMMISSIONER NAVA: One of the things that I am
10 interested in, you are taking a look at this particular
11 project, is that the denial is in part predicated upon part
12 of the applicant's refusal, refusal, to submit and entertain
13 any other kinds of uses which would have satisfied staff, and
14 would have satisfied the policies of the Coastal Act, such
15 as, a mixed-use proposal.

16 A mixed-use proposal including some visitor
17 serving on the first level, because let's not forget this is
18 Santa Monica. It is probably closest to one of the largest
19 population centers in the planet, next to Tokyo, and we are
20 going to get more people wanting to come down to the beach to
21 use this.

22 It eliminates 13 units, and there still would have
23 been a substantial return on investment for a limited number
24 of residential dwellings on the second floor.

25 CHIEF COUNSEL FAUST: Madam Chair.

1 CHAIR WAN: Okay.

2 Yes.

3 CHIEF COUNSEL FAUST: If I might.

4 In recognizing that point, the applicant's
5 response is that the City of Santa Monica will not approve
6 any of those uses, pursuant to their zoning. Their zoning is
7 not, of course, certified by the Commission. There is no
8 certified LCP here.

9 And, that is the basis of their argument that they
10 are caught between the local requirements and the Coastal
11 Commission requirements.

12 The reason, if the Commission is inclined to
13 support staff, that Mr. Olivas and I recommended a
14 continuance is, that we simply don't have any basis upon
15 which to advise you as to the truth, or lack of truth to that
16 assertion. We just need more time to research that to try to
17 figure out what the situation is, and what the option are.

18 That was why I was making the comments that I was
19 making.

20 COMMISSIONER REILLY: Call for the question.

21 CHAIR WAN: Mr. Douglas.

22 EXECUTIVE DIRECTOR DOUGLAS: Yes, if I may --

23 COMMISSIONER MC CLAIN-HILL: Is it possible --

24 EXECUTIVE DIRECTOR DOUGLAS: -- Ms. Henry --

25 COMMISSIONER MC CLAIN-HILL: -- to call for the

1 question?

2 CHAIR WAN: Yes, we would like to call the
3 question.

4 COMMISSIONER MC CLAIN-HILL: We don't need any
5 more staff input. We've heard, I think, enough. We are ready
6 to vote.

7 EXECUTIVE DIRECTOR DOUGLAS: Well, I think it is
8 important information.

9 COMMISSIONER MC CLAIN-HILL: We called for the
10 question.

11 EXECUTIVE DIRECTOR DOUGLAS: Okay, the zoning of
12 the city does allow this use.

13 COMMISSIONER KRUEER: Call for the question.

14 CHAIR WAN: Okay, Mr. Douglas is saying the city
15 does allow mixed use.

16 Okay, call the roll. The maker of the motion is
17 recommending a "No" vote.

18 SECRETARY GOEHLER: Commissioner Krueer?

19 COMMISSIONER KRUEER: No.

20 SECRETARY GOEHLER: Commissioner McClain-Hill?

21 COMMISSIONER MC CLAIN-HILL: Yes.

22 SECRETARY GOEHLER: Commissioner Nava?

23 COMMISSIONER NAVA: No.

24 SECRETARY GOEHLER: Commissioner Ruddock?

25 COMMISSIONER RUDDOCK: No.

1 SECRETARY GOEHLER: Commissioner Reilly?

2 COMMISSIONER REILLY: Yes.

3 SECRETARY GOEHLER: Commissioner Burke?

4 COMMISSIONER BURKE: No.

5 SECRETARY GOEHLER: Commissioner Dettloff?

6 COMMISSIONER DETTLOFF: Yes.

7 SECRETARY GOEHLER: Chairman Wan?

8 CHAIR WAN: No.

9 SECRETARY GOEHLER: Three, five.

10 CHAIR WAN: It is getting late, 13.c.

11 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, one

12 option that you do have, given the discussion, you could
13 waive the time limit for the applicant to come back to the
14 Commission, if he now wishes to come in with a mixed-use
15 project, or discuss --

16 CHAIR WAN: Yes, if he is able to come in with a

17 --

18 Mr. Faust.

19 EXECUTIVE DIRECTOR DOUGLAS: That would change the
20 project, in any event.

21 CHIEF COUNSEL FAUST: Well, it would be a
22 different project, so there is no time limit --

23 EXECUTIVE DIRECTOR DOUGLAS: That's true, okay.

24 CHIEF COUNSEL FAUST: -- as to filing anything.

25 EXECUTIVE DIRECTOR DOUGLAS: Thanks.

CHAIR WAN: Okay, fine, let's move on.

*

*

[Whereupon the hearing concluded at 5:32 p.m.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NOTICE

This transcript has been sealed
to protect its integrity.
Breaking the seal will void the
Reporter's Certification below.

To purchase a copy of this transcript
please contact the Court Reporter
who is the signatory below.

R E P O R T E R ' S C E R T I F I C A T E

STATE OF CALIFORNIA)

COUNTY OF MADERA)

ss.

I, PRISCILLA PIKE, Hearing Reporter for the State of
California, do hereby certify that the foregoing 28 pages
represent a full, true, and correct transcription of the
proceedings as reported by me on June 11, 2002.

Dated: July 17, 2002


PRISCILLA PIKE

PRISCILLA PIKE

Court Reporting Services

59672 WHISPERING WAY

TELEPHONE
209-685-1111